

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 3750.1

Approved: 03-23-83

This directive was reviewed and certified as current and necessary by (Enter Name), (Enter Title) Director, Office of Management, Budget and Evaluation/Chief Financial Officer, XX-XX-XXXX.

SUBJECT: WORK FORCE DISCIPLINE

1. PURPOSE. To provide guidance and procedures and state responsibilities for maintaining work force discipline in the Department of Energy (DOE).
2. REFERENCE.
 - a. Title 5, Code of Federal Regulations, parts 432, 735, and 752, which provides the statutory procedures for adverse actions and establishes ethical and other conduct standards and responsibilities for Federal employees.
 - b. Federal Personnel Manual (FPM) chapters 751 and 752, which state the Office of Personnel Management regulations and requirements for disciplinary and adverse actions.
 - c. DOE 3710.1A, LABOR-MANAGEMENT RELATIONS PROGRAM FOR FEDERAL EMPLOYEES, of 9-30-86, which outlines procedures for the administration of the Federal employee labor relations program.
 - d. DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, of 7-2-81, which provides guidance and instructions for establishing and administering the grievance system of the DOE.
3. COVERAGE AND EXCLUSIONS. This Order applies to all paid employees within the Department except:
 - a. Employees covered by sections 621(b) and (d) of Public Law 95-91, Department of Energy Organization Act;
 - b. Administrative Law Judges;
 - c. Experts and consultants;
 - d. Employees occupying positions above the GS-15 or GM-15 grade level;
 - e. Employees in the Senior Executive Service;
 - f. Presidential appointees;
 - g. Employees occupying positions in schedule C of part 213 of Title 5, Code of Federal Regulations.

DISTRIBUTION:
All Departmental Elements

INITIATED BY:
Office of This, That and the Other

4. POLICY.

- a. Disciplinary actions shall be taken only for the purposes of correcting unacceptable conduct, behavior on the job, or situations that adversely affect job performance; violations of laws, rules, or regulations.
- b. Actions shall be taken for unacceptable performance or nonperformance of assigned duties and failure to properly discharge inherent or assigned responsibilities.
- c. Unless proposed by the Secretary, all final decisions to take adverse actions (including reductions in grade and removals based on unacceptable performance) must be made by a higher level official in the chain of command than the official who proposed the action.

5. DEFINITIONS.

- a. Adverse Action. A personnel action which reduces an employee's basic pay or grade, or which involuntarily separates the employee from the Federal service, or which involuntarily places the employee in a nonpay, nonduty status. Adverse actions may result from disciplinary or nondisciplinary situations. Adverse actions are:
 - (1) Suspension. An action which places an employee, for disciplinary reasons, in a temporary status without duties and pay.
 - (2) Reduction in Grade or Pay. Actions taken that change an employee from a position at one grade and rate of basic pay to another position at a lower grade and rate of basic pay. (See Attachment for reductions in grade of pay excluded from coverage of this Order.)
 - (3) Furlough. The placing of an employee in a temporary status, without duties and pay because of lack of work or funds or for other nondisciplinary reasons.
 - (4) Removal. The separation of an employee from his or her position in the Department for cause.
- b. Board. Merit Systems Protection Board.
- c. Cause. A recognizable offense against the employee-employer relationship. May be reasons that are personal to the employee such as on or off the Job misconduct, inefficiency, or physical or mental inability to perform the duties of the position. There may also be impersonal reasons such as an emergency situation necessitating a short furlough or the need to correct a merit promotion error. Some causes have been specified by rules, Executive order, or regulation. A cause must also promote the efficiency of the service.

- d. Days. Calendar days.
- e. Deciding Official. The management official designated to make the final decision on a notice of proposed action issued by a Department official at a lower management level.
- f. Proposing Official. The supervisor or manager who issues a notice of proposed adverse action to an employee. (The supervisor or manager who issues an admonishment or reprimand to an employee is an issuing official.)
- g. Oral Admonishment. A disciplinary discussion between a management official or supervisor having the authority to take disciplinary action and an employee subject to that authority.
- h. Reprimand. A formal disciplinary action notice issued to an employee by a management official or supervisor having disciplinary authority with respect to that employee.

6. RESPONSIBILITIES.

- a. Heads of Departmental Elements with Delegated Personnel Authority shall:
 - (1) Administer a fair, impartial, uniform, and regulatorily proper work force discipline program within their jurisdictions.
 - (2) Assure that the rules and other conditions of employment are readily available to all employees under their jurisdiction.
 - (3) Assure that supervisors and management officials consider the guide contained in Attachment 1, and when the limitation on corrective actions is to be exceeded, assure that it is properly authorized.
 - (4) Issue notices of decision on adverse actions proposed by subordinate officials against employees under their jurisdiction.
 - (5) Approve or disapprove requests to extend the time to answer notices of proposed actions.
 - (6) Approve or disapprove requests to extend the notice of proposed action, not to exceed 30 additional days, in cases of reduction in grade and in cases of removal based on unacceptable performance.
 - (7) Advise the servicing personnel office whenever any of the above authorities are redelegated. All redelegations must be in writing.
- b. Director of Administration provides overall direction and administration of the Department's work force discipline program.

- c. The General Counsel or Chief Counsel of a Field Organization shall provide legal advice and assistance to servicing personnel offices. In coordination with servicing personnel offices, represents or participates in the preparation for representation of the DOE before the Board.
- d. Director of Personnel shall:
- (1) Develop the work force discipline program of the Department and provide staff assistance and advice on matters covered by this Order.
 - (2) Implement actions directed by the Office of Personnel Management and other outside authorities.
 - (3) Determine whether or not to seek review of initial decisions issued by presiding officials of the Board.
 - (4) Request approval of the Office of Personnel Management to extend the notice period for a reduction in grade or removal based upon unacceptable performance beyond the additional 30 days granted by officials in paragraph 7a.
- e. Servicing Personnel Offices shall:
- (1) Provide technical advice and assistance to supervisors and management officials in the implementation of this program.
 - (2) Review all disciplinary actions for consistency with rules, regulations, and Departmental procedures.
 - (3) Inform employees of their employment obligations.
 - (4) Provide advice and assistance on procedures to employees who are subject to disciplinary or adverse actions.
 - (5) After giving advance notice to the Director of Personnel, coordinate with the General Counsel or chief counsel of a field organization in order to provide for representation of the Department at hearings before the Board.
- f. Supervisors and Managers shall:
- (1) Keep employees informed of rules, regulations, and standards of conduct, and maintain order and discipline within the framework of established procedures.
 - (2) Gather, analyze, and consider carefully all facts and circumstances before taking or recommending corrective action.

- (3) Issue oral admonishments, notices of reprimand, and initiate proposed actions after consultation with the appropriate servicing personnel office.
7. STAFF ADVICE IN CONNECTION WITH TAKING ACTIONS. Managers are encouraged to seek advice and assistance in effecting actions, as needed, from the servicing personnel office. All letters of reprimand, adverse action proposals and decision letters, and letters of termination must be concurred in by the servicing personnel office prior to delivery to the employee.



WILLIAM S. HEFFELFINGER
Director of Administration

TABLE OF CONTENTS

CHAPTER I - GENERAL	<u>Page</u>
1. Taking Disciplinary Actions Constructively	I-1
2. Technical Considerations	I-1
3. Delivery of Notices	I-3
4. Recording Actions	I-3
5. Official Time	I-3
 <u>CHAPTER II - TYPES OF DISCIPLINARY ACTIONS, COVERAGE, AND PROCEDURES</u>	
1. Oral Admonishment	II-1
2. Notice of Reprimand	II-1
3. Suspension for 14 Days or Less	II-1
4. Removal, Suspension for More Than 14 Days, or Reduction in Grade	II-2
5. Reduction in Grade or Removal Based on Unacceptable Performance	II-5
6. Termination	II-7
 <u>CHAPTER III - NONDISCIPLINARY ADVERSE ACTIONS</u>	
1. Coverage	III-1
2. Removal, Reduction in Grade or Pay, or Furlough for 30 days or Less	III-1
3. Procedures	III-1
 <u>CHAPTER IV - REPRESENTATION, APPEALS, AND GRIEVANCES</u>	
1. Representation	IV-1
2. Appeals	IV-1
3. Grievances	IV-2
 <u>ATTACHMENTS</u>	
1. Guide to Selecting Corrective Action in Discipline Cases	
2. Notice of Reprimand	
3. Notice of Proposed Suspension of 14 Days or Less	
4. Notice of Decision to Suspend 14 Days or Less	
5. Notice of Proposal to Remove	
6. Notice of Decision to Remove	
7. Termination Letter	
8. Actions and Employees Excluded from Coverage of this Order	

CHAPTER IGENERAL1. TAKING DISCIPLINARY ACTIONS CONSTRUCTIVELY.

- a. The objective of a disciplinary action is the development, correction, and rehabilitation of the employee. Constructive discipline encourages employee acceptance of responsibility and forestalls the development of situations in which there is no alternative to removal. Corrective action is taken only when necessary and, then, to correct an adverse situation promptly and with equity.
- b. The corrective action taken should be the minimum thought necessary to bring about the correction required. Repeated infractions are prima facie evidence that the previous disciplinary action was insufficient to bring about correction and more severe corrective actions shall normally be assessed in such cases.
- c. Disciplinary actions are personal matters and, to the maximum extent feasible under the circumstances, should be accomplished in private. In order to have the maximum corrective effect, disciplinary actions should be administered as soon as possible after a supervisor becomes aware of an employee breach of the rules. Interviews and inquiries concerning such actions are conducted privately and in such a manner as to minimize personal embarrassment. The minimum number of persons possible, consistent with the need for fact gathering, internal coordination, and labor management relations obligations should be involved in, or made party to, the action.

2. TECHNICAL CONSIDERATIONS.

- a. Cause. An identifiable cause must exist before an adverse or disciplinary action is proposed. The cause shall be stated in the notice of proposed action and reference in the letter of final decision in terms of what happened rather than conclusions based on the factual occurrence.
- b. Reasonableness.
 - (1) Each situation is evaluated on the basis of its own factual circumstances to assure that the action proposed and taken is reasonable under those circumstances. Illustrative of factors to be considered are:
 - (a) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical, or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

- (b) The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
 - (c) The employee's past disciplinary record;
 - (d) The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
 - (e) The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
 - (f) Consistency of the corrective action with those imposed upon other employees for the same or similar breaches within the organization;
 - (g) Consistency of the corrective action with Attachment 1, "Guide to Selecting Corrective Action in Discipline Cases";
 - (h) The notoriety of the breach or its impact upon the reputation of the DOE;
 - (f) The clarity with which the employee was on notice of any rules that were violated in committing the breach, or had been warned about the conduct in question;
 - (j) Potential for the employee's rehabilitation;
 - (k) Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and
 - (l) The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.
- (2) Not all of the factors apply in every case. Thus, the relevant factors given the circumstances of each individual case must be considered, and a responsible balance within tolerable limits of reasonableness must be struck. The relevant factors must not be evaluated mechanistically by formula.
- c. Timeliness. Investigation of situations that could lead to disciplinary actions should be initiated while information is fresh and readily available. Normally an action should be initiated as soon as the facts have been ascertained. If a substantial delay in effecting an action can be anticipated, the employee should be informed that the action is being

considered, that a determination will be made when possible on a course of action, and that he. or she will be informed when this decision is made.

3. DELIVERY OF NOTICES. When practical, it is desirable that notices of proposal, decision, and reprimand be delivered personally and explained to the employee. An attempt should be made to have the employee acknowledge receipt in writing on a copy of the notice. In cases where it is difficult or impossible to reach the employee in person, the notice should be transmitted by certified or registered mail, return receipt requested, and a copy sent via regular mail. All notices of decision must be delivered to the employee at or before the time the action becomes effective.
4. RECORDING ACTIONS.
 - a. Documentation of actions taken under this Order are sent to the servicing personnel office for retention. Submissions include copies of the notice of Proposed action, the answer of the employee if written, a summary thereof if made orally, the decision notice, and any order effecting the action together with any supporting material. A record should also be made of the circumstances of each case, including the date of delivery of notices and the sequence of any pertinent events.
 - b. The background records of actions (excluding the Standard Form 50, "Official Personnel Action") are not filed in the official personnel folder (OPF). They are kept in a separate file, which is incorporated in the appeal or grievance file if the employee appeals or grieves the action.
 - c. If the supervisor writes a Memorandum confirming the substance of the oral admonishment, a copy shall be furnished to the employee. Memorandums of Oral admonishment shall not be filed in the OPF.
 - d. Notices of reprimand shall be filed on the left (temporary) side of the OPF for a period not to exceed 1 year or until the employee leaves the DOE, whichever is earlier, or they may be removed earlier if the official issuing the notice so directs.
 - e. The Standard Form 50 recording an adverse action is maintained as a permanent record in the employee's OPF.
5. OFFICIAL TIME. Employees who are issued proposed notices of adverse action, including proposed notices of reduction in grade or removal based on unacceptable performance, shall be given a reasonable amount of official time to review the material relied on to support the action, to prepare an answer, and to secure affidavits, if he or she is otherwise in an active duty status.

3-23-83

CHAPTER XI

TYPES OF DISCIPLINARY ACTIONS, COVERAGE, AND PROCEDURES1. ORAL ADMONISHMENT.

- a. **Coverage.** All employees within the scope of this Order are covered by this paragraph.
- b. **Use.** There is no prescribed format for an oral admonishment. It is particularly suitable to situations which can be corrected by the employee and is used where it is anticipated that it will achieve the required changes in conduct, habit, or work method.

2. NOTICE OF REPRIMAND.

- a. **Coverage.** All employees within the scope of this Order are covered by this paragraph.
- b. **Use.** The notice of reprimand should be used in those situations which require an action more stringent than an oral admonishment, such as where an employee has not responded constructively to oral admonishments for the same or similar breaches. In some situations a notice of reprimand may be the last step in a progression of penalties before removal if the employee has been given a clear warning that a further offense could lead to removal.
- c. **Contents.** Notices of reprimand shall specify clearly the nature of the infraction or transgression, including specific information related to that reason such as times, dates, and circumstances that required corrective action to be taken. It should inform the employee of all time limits, the right to grieve, where to seek assistance regarding the grievance procedure, of the right to representation, and that the notice will be filed in the OPF for a period of 1 year unless the employee leaves the DOE sooner. (Attachment 2 contains an example of a notice of reprimand.)

3. SUSPENSION FOR 14 DAYS OR LESS.

- a. **Coverage.** The following DOE employees are covered by this paragraph:
 - (1) All employees in the competitive service.
 - (2) All employees who occupy a position in schedule A or schedule B of part 213 of Title 5, Code of Federal Regulations, and FPM chapter 213.

b. Procedures.

- (1) Notice of Proposed Suspension for 14 Days or Less. The notice must indicate clearly that it is a proposal rather than a final decision, and that the final decision will not be made until after receipt of the employee's reply or after the expiration of the time period for reply if no reply is made. It shall also inform the employee where and to whom the reply shall be directed and the right to:
- (a) Review the material supporting the action proposed in the notice. While not required, proposing officials are encouraged to attach to the notice of proposal copies of all supporting material.
 - (b) A reasonable time to answer (but not less than 24 hours) orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer.
 - (c) Be represented by an attorney or other Representative. (See FPM chapter 752, DOE 3710.1, and the labor management agreement if the employee is included in a bargaining unit.) (Attachment 3 contains an example of a notice of proposal.)

(2) Notice of Decision.

- (8) The notice of decision shall be issued at the earliest practicable date after the receipt of the employee's reply, or after expiration of the time allocated for the employee's answer. In arriving at the written decision, only the reason(s) specified in the notice of proposed action and any answer of the employee or his or her representative will be considered.
- (b) The decision shall state which reason(s) were relied upon and which were not (tell the employee which reasons in the proposal notice were determined to be valid and which were dismissed and why) and, if the proposed suspension is determined to be warranted, the effective date of the action. No new reasons may be added to the letter of decision.
- (c) The notice must state the employee's grievance rights and whom to contact regarding these rights. (Attachment contains an example of a notice of decision.)

4. REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, OR REDUCTION IN GRADE. This paragraph applies to, but is not limited to, disciplinary actions based on conduct related factors or disciplinary actions that involve both conduct and performance related factors. An employee may be removed or reduced in grade for misconduct or for unacceptable performance. The regulatory and procedural requirements are different in each case. For procedures on

reduction in grade or removal of an employee based solely on unacceptable performance, see page 11-5, paragraph 5. When an employee is removed, "suspended for more than 14 days, or reduced in grade based on unacceptable performance and for misconduct, or for misconduct alone, this paragraph applies. However, such actions must promote the efficiency of the service.

a. Coverage. The following Departmental employees are covered by this paragraph:

- (1) All employees in the competitive service who are not serving a probationary or trial period under an initial appointment, or who have completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less.
- (2) All employees who are preference eligibles in the excepted service who have completed 1 year of current continuous service in the same or similar positions.
- (3) An employee with competitive status who occupies a position in schedule-B of part 213 of Title 5, Code of Federal Regulations, and FPM chapter 213.

b. Procedures.

(1) Notice of Proposed Action.

- (a) The notice of proposed action must state clearly the reason(s) for proposing the action and include the specific information that supports that reason, such as times, dates, and circumstances. It shall inform the employee that if the proposed action is taken, it will not become effective earlier than 30 days from the date of receipt of the notice. Additionally, the employee shall be informed of the right to:
 - 1 Review the material supporting the reasons for the action proposed in the notice. While not required, proposing officials are encouraged to attach to the notice of proposal copies of all supporting material.
 - 2 A reasonable time, but not less than 7 days, to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer.
 - 3 Be represented by an attorney or other representative. (See FPM chapter 752, DOE 3710.1, and the labor management agreement if the employee is included in a bargaining unit.)
- (b) The notice of proposed action must indicate clearly that the notice is a proposal and that a final decision will not be made until after receipt of the employee's reply or after expiration

of the time period for reply. It must also inform the employee where and to when to direct a reply. (Attachment 5 contains an example of a notice of proposal.)

- (c) The person designated to hear the employee's oral answer shall have the authority to either make or recommend a final decision on the proposed adverse action.

(2) Exception.

- (a) The following exception to the 30-day notice period is authorized.
 - 1 The 30-day advance notice period is not required when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. This exception shall not be invoked solely on evidence of the employee's arrest. However, in those instances where there is evidence that the employee was arrested and held for further legal action by a magistrate or was indicated by a grand jury, there would be reasonable cause for believing the employee committed a crime.
 - 2 If this exception is invoked, the employee may be required to furnish any answer to the proposed action and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than 7 days.
 - 3 When the circumstances require immediate action, the employee may be placed in a nonduty status with pay or such time, not to exceed 10 days, as is necessary to effect the action.
- (h) Currently, the above is the only exception to the 30-day notice period. In disciplinary situations involving a need to keep the employee away from his or her position, a temporary reassignment during the 30-day advance notice period may be advisable.
- (c) In emergency, nondisciplinary situations involving the need to remove the employee from the premises immediately, the employee should be required to take sick or annual leave, as appropriate, or leave without pay, if the employee has exhausted his sick and annual leave. However, after the immediate emergency passes, the employee must be returned to duty if he or she is able to perform. If subsequent adverse action is to be initiated, the employee must be maintained in a pay status during the notice period.

- (d) Before taking any action in the above situations, consult with the Office of Personnel, Personnel Policies and Programs Division, Employee/Labor Management Relations and Safety Branch.

(3) Notice of Decision.

- (a) The notice of decision shall be issued at the earliest practicable date after receipt of the employee's reply or expiration of the time allocated for the employee's answer. In arriving at the decision, only the reasons specified in the notice of proposed action and any answer of the employee or his or her representative made to the designated official will be considered.
- (b) The decision shall state which reason(s) were relied upon (tell the employee which reasons in the proposal notice were determined to be valid and which were dismissed and why), and if the proposed action is determined to be warranted, the effective date of the action. No new reasons may be added to the notice of decision.
- (c) It shall contain information regarding appeal and representation rights and the name of the individual who the employee may contact concerning appeal rights and procedures.
- (d) It shall be delivered to the employee at or before the time the action becomes effective. (Attachment 6 contains an example of a notice of decision.)

5. REDUCTION IN GRADE OR REMOVAL BASED ON UNACCEPTABLE PERFORMANCE. An employee may be reduced in grade or removed at any time during the performance appraisal cycle that the employee's performance in one or more critical elements of the job becomes unacceptable. The procedures and requirements for such actions are separate from those contained in paragraph 4.

- a. Coverage. This paragraph applies to all employees, except those excluded in paragraph 3 of Attachment 8.
- b. Reasonable Time. Before proposing a reduction in grade or removal under this paragraph, the employee shall be informed of the critical element(s) for which performance is unacceptable, and given a reasonable time to demonstrate acceptable performance for the critical element(s) identified as unacceptable. Reasonable time means an amount of time commensurate with the duties and responsibilities of the employee's job which is sufficient to allow the employee to show whether he or she can meet minimum performance standards.
- c. One-year Limitation. Title 5, United States Code, section 4303(c)(2), places a 1-year time restriction on the age of instances used to support the demotion or removal of an employee for unacceptable performance.

d. Procedures.

- (1) Notice of Proposed Action. An employee whose reduction in grade or removal is proposed under this paragraph is entitled to 30 days advance written notice of the proposed action. The notice shall identify the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical elements of the employee's position involved in each instance of unacceptable performance. It shall inform the employee of the right to:
 - (a) Be represented by an attorney or other representative. (See FPM chapter 752, DOE 3710.1, and the labor management agreement if the employee is included in a bargaining unit.)
 - (b) A reasonable time to answer orally and in writing.
- (2) Extension of Notice Period. The 30-day advance notice period may be extended for not more than 30 additional days by an authorized Departmental official (see page 3, paragraph 6a(6)). Requests to extend further the notice period shall be referred by the deciding official to the Director of Personnel, who may request prior approval from the Office of Personnel Management.
- (3) Notice of Decision. The written decision to retain, reduce in grade, or remove an employee shall be issued within 30 days after the date of expiration of the advance notice. In the case of a reduction in grade or removal under this paragraph, the written decision shall specify the instances of unacceptable performance by the employee on which the reduction in grade or removal is based. Instances of unacceptable performance more than 1-year old as of the date of the notice of proposal may not be used as a basis for action in connection with the decision. It shall contain information regarding appeals and representation rights and the name of the individual who the employee may contact concerning appeal rights and procedures. It shall be delivered to the employee at or before the time the action becomes effective.
- (4) Performance Improvement. If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any Departmental records relating to the employee.

6. TERMINATION.

a. Coverage. The following employees are covered by this paragraph:

- (1) All employees in the competitive service who are serving a probationary or trial period under an initial appointment or who have not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less.
- (2) All employees in the excepted service, except preference eligibles who have completed 1 year of current continuous service in the same or similar positions.

b. Procedures. This paragraph applies to, but is not limited to, removals based on conduct related factors or disciplinary actions that involve both conduct and performance related factors. If the employee is being reduced in grade or removed for unacceptable performance, the requirements of paragraph 5 of this Order apply for excepted service employees who have completed 1 year of current continuous employment in the same or similar positions.

c. "Notice of Termination. The notice must state the reasons for the termination. (Attachment 7 contains an example of a notice of termination.)

CHAPTER III

NONDISCIPLINARY ADVERSE ACTIONS

1. COVERAGE. The following DOE employees are covered by this paragraph:
 - a. All employees in the competitive service who are not serving a probationary or trial period under an initial appointment or who have completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less.
 - b. All employees who are preference eligibles in the excepted service who have completed 1 year of current continuous service in the same or similar positions.
 - c. An employee with competitive status who occupies a position in schedule B of part 213 of Title 5, Code of Federal Regulations, and FPM chapter 213.
2. REMOVAL, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS. An employee may be subject to an adverse action even though there is no delinquency or misconduct on his or her part. The action is not taken for disciplinary reasons. Examples of such nondisciplinary actions taken by management are:
 - a. Furlough because of lack of funds or work.
 - b. Demotion resulting from a reclassification action which results in a loss of grade or pay but no entitlement to grade retention.
 - c. Demotion or separation because of medical disqualification.
 - d. Reduction in the number of hours of duty per week for a part-time employee.
3. PROCEDURES. Nondisciplinary adverse actions are processed in compliance with the procedures used for adverse actions in Chapter II, except the advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities. Constructive efforts should continue while the nondisciplinary adverse action is in process to locate other suitable assignments which will reduce the employee's financial loss and disruption in his or her career.

CHAPTER IV

REPRESENTATION, APPEALS; AND GRIEVANCES

1. REPRESENTATION.

- a. Employees who have received a notice of proposed disciplinary action are entitled to be represented by an attorney or other representatives. In addition, employees may be accompanied by a representative when making an oral reply to a notice of proposed adverse action. If an employee of the Department is selected as a representative and that person is willing to serve, the representative's supervisor, acting independently or in concert with the supervisor of the selecting employee, may disallow the employee's choice on the basis that the:
 - (1) Individual activities as a representative would cause a conflict of interest or position; or
 - (2) Release of the employee from his or her official position would give rise to unreasonable costs to the Government; or
 - (3) Individual's priority work assignments preclude his or her release from official duties.
- b. The terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.
- c. This paragraph does not apply to representation during appeals before the board and in cases of disciplinary actions that are grieved. (See Title 5, Code of Federal Regulations, section 1201.31, for procedures governing representation during appeals before the board and DOE 3771.1 concerning representation during grievances.)

2. APPEALS.

- a. Employees in the Competitive Service or Who Are Preference Eligibles. Employees are entitled to appeal the following actions to the board beginning with the day after the effective date of the action until not later than 20 calendar days after the effective date:
 - (1) Adverse actions, except suspensions of 14 days or less;
 - (2) Reduction in grade or removal based on unacceptable performance; and
 - (3) Adverse actions or reduction in grade or removal based on unacceptable performance coupled with an allegation of prohibited discrimination.

- b. When a decision letter is issued to an employee on a matter appealable to the board, the employee shall be provided:
 - (1) Notice of the time limits for appealing to the board and the address of the appropriate board office for filing the appeal;
 - (2) A copy of the board's regulations;
 - (3) A copy of the Merit Systems protection Board Form 20, "Merit Systems" Protection Board Appeals Form"; and
 - (4) Notice of any applicable rights to a grievance procedure.
- c. Petitions for Review. A request to the board to review the initial decision of a presiding official shall be recommended by the servicing personnel office to the Director of Personnel and arrive as soon as possible after receipt of the initial decision. Such recommendations shall establish that:
 - (1) New and material evidence is available that, despite due diligence, was not available when the record was closed; or
 - (2) The decision of the presiding official is based on an erroneous interpretation of statute or regulation.
- d. Prohibited Personnel Practice. Any employee who believes that a disciplinary or corrective action taken against him or her is a prohibited personnel practice under Title 5, United States Code, section 2302, may file a complaint with the special counsel of the board.

3. GRIEVANCES. See DOE 3771.1 concerning grievances.

GUIDE TO SELECTING CORRECTIVE ACTION IN DISCIPLINE CASES

1. GENERAL.

- a. This guide provides a framework by which to relate the facts of a situation to the potential courses of corrective actions. It is not intended to replace supervisory judgment nor dictate the selection of corrective actions. Mechanical use of the guide must be avoided.
- b. The guide explains many of the common breaches of regulations and conduct. It is not a penal code and is neither intended to list all potential situations requiring corrective action nor is it intended to imply that notices contain the precise language in the guide. The guide sets forth a policy framework by which all breaches of regulations or conduct, whether specifically described or not, may be evaluated so that a sound, support. able corrective action may be instituted.
- c. The guide does not dictate the specific corrective action to be assessed in a particular situation. It reflects the relative severity of various breaches and establishes the range within which corrective actions usually fall. While the listed maximum corrective action cannot be exceeded unless otherwise authorized by a higher level official with delegated authority (see page 3, paragraph 6a(3)), a corrective action less severe than the minimum for the range may be used if the management official determines this to be appropriate under the circumstances existing in the situation being considered. Thus, if the guide shows reprimand as the maximum, the supervisor may determine no formal action is needed or may use either an oral admonishment or a reprimand. If Suspension is the listed maximum, an oral admonishment, a reprimand!, or a suspension of any number of calendar days up to and including that shown in the guide could be assessed. A maximum of removal permits a choice of an oral admonishment, a reprimand, a suspension or removal.
- d. When considering which column of the guide is to be used, it is not necessary to establish that prior breaches of regulation or conduct under consideration were of the same nature as the current breach. however, if the prior breaches are used to determine the appropriate penalty for the current breach, the prior breaches must have been in writing, be a matter of record, and the employee must have been permitted to dispute the charges to a higher level than the authority that imposed the discipline.
- e. Actions resulting from violation of conflict of interest will require consultation with the General Counsel or chief counsel of a field organization.

2. PROGRESSION OF CORRECTIVE ACTIONS. To assure that the minimum level of corrective action that can be expected to effect the needed change is used and that the employee is provided advance notice of the potential consequences of Continued failure to conform to standards of conduct and

performance, a progression of corrective actions is usually applied. This progression usually begins with oral warnings or admonishments and proceeds through letters of reprimand to suspension and, if the employee continues not to accept his or her responsibilities, it can culminate in removal.

- a. A progression of corrective actions means the application of increasingly more severe corrective actions as the employee continues to breach the employment relationship. (see page 3, paragraph 5, of this attachment for procedures on prior breaches.) This means that where a 3-day suspension was imposed for a first offense, a second offense would call for at least a 3-day suspension even though the applicable items in the guide might " show a range of reprimand to removal. Similarly, if a 5-day suspension was imposed for a second breach, consideration of corrective action to be imposed for a third offense would begin with a 5-day suspension.
- b. A removal for misconduct is effected only after a progression of corrective actions unless exceptional circumstances exist. A progression need not include suspensions if the preceding reprimands clearly show that the employee has been given understandable notice of management's concern and of the action that management might take in the future if the basis for that concern continues.

3. COMBINATION OF BREACHES. A set of circumstances may involve only one breach, may appear to involve more than one breach when there is only one, may involve more than one significant breach, or may involve more than one breach only one of which is significant.

- a. Avoid multiplication of a single cause into several breaches, and refrain from loading on petty breaches when the major cause provides ample basis for taking necessary action.
- b. When different, significant breaches occur in combination, each breach may be included as a cause of action. A more severe corrective action may be assessed than would be appropriate for each breach singly; but it may not exceed that allowable for the most serious of the breaches as determined by applying the column appropriate for the number of breaches occurring in combination, including prior breaches, if any.

4. SERIES OF BREACHES. A series of breaches consists of more' than one breach committed by an employee at different times in such a manner that appropriate action could not be completed on each of the breaches individually even enough management has proceeded at a reasonable pace. This could be because there was insufficient time to develop needed background information to fully evaluate available facts or to fulfill procedural requirements for taking action on one breach before another is committed.

- a. When a determination is made not to take action for a breach, that breach may not be used later to support an action for a subsequent breach.

- b. When management has had sufficient time and opportunity to take corrective action for a breach of the employee-employer relationship and fails to do so, that breach should not be used as part of a series.
 - c. If there has been a series of breaches, a more severe corrective action than that shown for a single breach may be considered. This corrective action may exceed the maximum allowable under the guide for any of the breaches individually. Determine the corrective action in the same manner as described for combination of breaches in paragraph 3.
5. PRIOR BREACH. A prior breach as used in the context of this Order is a breach of the employment relationship for which a corrective action has been assessed. Prior breaches may be used in determining the severity of a corrective action resulting from a current breach. When used in this manner, the prior breach and the resulting corrective action assessed are shown in the notice of proposed action and the notice of final, decision.
- a. A suspension should be used only if its effective date was within the 3 years preceding the date of the notice of proposed action on the current breach.
 - b. An oral admonishment or a reprimand may be used only if its effective date was within 1 year preceding the date of the notice of proposed action in the current breach.
 - c. An oral admonishment may not be used alone to support the corrective action for a second or subsequent breach. An oral admonishment may be used within the time period specified in subparagraph b to support a decision to initiate a reprimand for a breach that might not otherwise appear to warrant that level of corrective action. When used in this manner, the admonishment must be cited in the letter of reprimand. An oral admonishment may not be used to support an adverse action.

this chart shows the interrelationships of the key factors in the disciplinary system but neither establishes additional procedural requirements nor automatically prescribes the specific corrective action.

Information on how the basic corrective action was derived and on how any favorable or unfavorable elements which may exist were considered need not be included in notices but must be available for subsequent use. The Board has held, however, that a notice of decision which contains information that demonstrates that all mitigating factors had been considered and a responsible judgment had been reached that a lesser penalty was inadequate may be entitled to greater deference from the Board.

- | | | | |
|--|---|--|---|
| <p>1. Basic corrective action is the one that would be used if there were no other considerations. It is based on:</p> <p>a. <u>Breach.</u></p> <p>(1) Nature.
(2) Seriousness.
(3) Consequences.
(4) Effect.
(5) Notoriety.</p> <p>b. <u>Rehabilitative potential of corrective action.</u></p> <p>c. <u>Nature and prominence of employee's position.</u></p> <p>d. <u>Consistency of corrective action.</u></p> <p>e. <u>Adequacy & effect of alternate corrective actions.</u></p> | <p>2. Favorable elements are those considerations which tend toward the imposition of less severe corrective action. Included are:</p> <p>a. <u>Situation.</u></p> <p>(1) Possibility of genuine misunderstanding.
(2) Enticements or provocations.
(3) Culpabilities of others.
(4) Mitigating circumstances.</p> <p>b. <u>Employee.</u></p> <p>(1) Length of service.
(2) Quality of work history.
(3) Personal reputation.
(4) Past contributions.
(5) Record of cooperativeness.
(6) Record of achievement.
(7) Job level.
(8) Past work record.
(9) Performance on job.
(10) Ability to get along with fellow workers.
(11) Dependability.</p> | <p>3. Unfavorable elements are considerations which tend to show a need for more severe action than is usually taken. Included are:</p> <p>a. <u>Corrective action for past breaches.</u></p> <p>(1) Suspension.
(2) Reprimand.
(3) Admonishment.</p> <p>b. <u>Combination of breaches.</u></p> <p>c. <u>Series of breaches.</u></p> <p>d. <u>Nature of other breaches.</u></p> <p>e. <u>Recency of other breaches.</u></p> <p>f. <u>Employee willfulness.</u></p> | <p>4. The corrective action assessed results from weighing of favorable and unfavorable elements in relationship to the breach.</p> <p>a. <u>Proposed corrective action is determined on the basis of all information available at time of action and is specifically stated in notice of proposed action.</u></p> <p>b. <u>Corrective action decided upon is determined based on all available information including employee's reply to notice of proposed action. State corrective action decided upon and effective date in notice of decision.</u></p> |
|--|---|--|---|

	<u>CAUSE</u>	<u>ACTION</u>		
		<u>First Breach</u>	<u>Second Breach</u>	<u>Third Breach</u>
1.	Delay or failure to carry out assigned work or instruction in a reasonable period of time.	Reprimand	Reprimand to 5-Day Suspension	Reprimand to Removal
2.	Insubordinate defiance of authority, refusal to comply with proper orders, wanton disregard of directives or insolence.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
3.	Tardiness of less than 1/2 hour. 1/	Reprimand	Reprimand	1 -Day Suspension
4.	Unauthorized absence of 8 hours or less, tardiness over 1/2 hour, leaving the job without permission or delayed return from lunch.	Reprimand	Reprimand to 5-Day Suspension	Reprimand to Removal
5.	Unauthorized absence of more than 8 hours. 2/	Reprimand to 5-Day Suspension	Reprimand to 10-Day Suspension	5-Day Suspension to Removal
6.	Failure to request leave according to established procedures.	Reprimand to 5-Day Suspension	Reprimand to 10-Day Suspension	5-Day Suspension to Removal
7.	Failure to honor a valid denial of a leave request.	Reprimand to 5-Day Suspension	Reprimand to 10-Day Suspension	5-Day Suspension to Removal
8.	Loafing or sleeping on duty:			
	a. When hazard to personnel or property is not acute or when no injury or loss is involved.	Reprimand	Reprimand to 10-Day Suspension	Reprimand to Removal
	b. When hazard to personnel or property is acute or when there has been injury or significant loss.	Reprimand to Removal	5-Day Suspension to Removal	10-Day Suspension to Removal

	<u>CAUSE</u>	<u>ACTION</u>		
		<u>First Breach</u>	<u>Second Breach</u>	<u>Third Breach</u>
9.	Careless workmanship or negligence.	Reprimand	Reprimand to 5-Day Suspension	Reprimand to Removal
	When consequences are extreme, an attempt is made to conceal defective work or there is an unauthorized attempt to remove or destroy work.	Reprimand to 5-Day Suspension	Reprimanded to Removal	5-day Suspension to Removal
10.	Careless workmanship resulting in possible or actual minimal damage to property and minor disruption of mission.	Reprimand	Reprimand to 5-Day Suspension	Reprimand to Removal
	When possible or actual major damage to property is involved with significant mission disruption or possible or actual danger to the lives or well being of other employees.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal.
11.	Loss of, damage to, unauthorized use or destruction of property, records or information.	Reprimand	Reprimand to 5-day Suspension	Reprimand to Removal.
	When willfulness or intent is involved.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension Reprimand
12.	Theft, actual or attempted. (Penalty is determined primarily by value of property, mitigating circumstances, employee's employment history and employee's explanation.)	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal

<u>CAUSE</u>	<u>ACTION</u>		
	<u>First Breach</u>	<u>Second Breach</u>	<u>Third Breach</u>
13. Deliberate misrepresentation; falsification, exaggeration, or concealment of a material fact in connection with any official document; or withholding of material facts in connection with matters under official investigation.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
14. Rude, boisterous play which adversely affects production, discipline, or morale; use of abusive or offensive language: quarreling or interfering with the production of others.	Reprimand to 5-Day Suspension	Reprimand to Removal	Reprimand to Removal
15. Fighting, threatening or inflicting bodily harm on another, physical resistance to competent authority or indecent or immoral conduct.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
16. Gambling during working hours.	Reprimand	Reprimand to 5-Day Suspension	Reprimand to Removal
17. Promotion of or assisting in Operation of organized gambling on premises.	Reprimand to Removal	5-Day Suspension to Removal	10-Day Suspension to Removal
18. Abusing, using or selling intoxicants or drugs on duty. Reporting for duty drunk or impaired by intoxicants. 3/	Reprimand to 5-Day Suspension	Reprimand to Removal	5-Day Suspension to Removal
19. Being on duty so intoxicated as to be unable to properly perform assigned duties, or to be a hazard to self or others. 3/	Reprimand to Removal	5-Day Suspension to Removal	5-Day Suspension to Removal

CAUSE

ACTION

First Breach Second Breach Third Breach

Failure to honor acknowledged or adjudicated debts or legal obligations. (In determining whether a breach has occurred, consider whether extenuating circumstances have developed after the employee incurred the obligation and the employee's previous record.) 4/.

Reprimand

Reprimand

Reprimand

1. Making false, unfounded, or highly irresponsible statements against other employees, supervisors, other officials, or subordinates with the intent to destroy or damage the reputation, authority or official standing of those concerned.

Reprimand
to Removal

5-Day
Suspension
to Removal

10-Day
Suspension
to Removal

2. Any action or failure to take action based on race, color, religion, sex (including sexual harassment), age, or national origin of an employee, former employee, or applicant which affects his or her rights, privileges, benefits, dignity, and equality or economic opportunity. Consider circumstances and the effect on the person discriminated against, use of abusive language, violent treatment, or insulting demeanor.&/

Reprimand
to 5-Day
Suspension

Reprimand
to 14-Day
Suspension

10-Day
Suspension
to Removal

If the discriminatory practice was deliberate. 5/

Reprimand
to 14-Day
Suspension

14-Day
Suspension
to Removal

Removal

	<u>CAUSE</u>	<u>ACTION</u>		
		<u>First Breach</u>	<u>Second Breach</u>	<u>Third Breach</u>
23.	Engaging in a prohibited personnel practice (see Title 5, United States Code, section 2302), other than that described in cause 22, or an unfair labor practice. 5/	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	10-Day Suspension to Removal
	If violation of prohibited personnel practice was deliberate.	Reprimand to 14-Day Suspension	14-Day Suspension	Removal
24.	Use of abusive or offensive language toward a subordinate; baiting or otherwise inciting a subordinate to violate rules or regulations; coercion in deprivation of an employee's rights; or reprisal for employment of appellate procedures. 5/	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	10-Day Suspension to Removal
	If violation was deliberate. 5/	Reprimand 30-Day Suspension	14-Day Suspension to Removal	Removal
25.	Compromise or discredit of examination materials or process resulting from discussion of specific question(s) or content of examination with other employee(s) based on experience in the examination when there is no deliberate effort or intent to compromise the examination materials or process.	Reprimand	Reprimand to 10-Day Suspension	5-Day Suspension Reprimand
	Compromise of an examination through unauthorized possession, use, or furnishing to others of examination information or materials.	10-Day Suspension to Removal	14-Day Suspension to Removal	Removal

ACTION

<p>26. Infraction(q) of security regulations which includes but is limited to the following occurrences: (a) Improper storage of classified materials, (b) failure to secure a classified container (safe or vault), (c) transmission of classified materials to a non-approved facility, (d) failure to observe prescribed document control and accountability procedures, and (e) removal of classified documents to private residences or otherwise endangering the security of classified information within a 12-month period of the occurrence.</p> <p>When the infraction(s) is intentional or results in unauthorized release or compromise of security information.</p>	<p>Reprimand</p>	<p>Reprimand to 14-Day Suspension</p>	<p>5-Day Suspension to Removal</p>
	<p>Reprimand to Removal</p>	<p>14-Day Suspension to Removal</p>	<p>14-Day Suspension to Removal</p>
<p>27. Aiding and assisting in the prosecution of a claim against the United States, or receiving any gratuity or any share of interest in a claim from any claimant other than in the discharge of proper official duties.</p>	<p>5-Day Suspension to Removal</p>	<p>14-Day Suspension to Removal</p>	<p>Removal</p>
<p>28. Soliciting contributions from another employee for gifts or presents to those in superior official positions. Accepting gifts or presents offered or presented as contributions from persons in Government</p>	<p>Reprimand</p>	<p>Reprimand to 10-Day Suspension</p>	<p>Reprimand to Removal</p>

	<u>CAUSE</u>	<u>ACTION</u>		
		<u>First Breach</u>	<u>Second Breach</u>	<u>Third Breach</u>
	employment receiving lower salary. A voluntary gift of a minimal value or a donation in a minimal amount is not prohibited when made on a special occasion.			
29.	Discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any 1-year period or any other pattern of discourteous conduct.	Reprimand to 14-Day Suspension	10-Day to 14-Day Suspension	14-Day Suspension to Removal
30.	Failure to work in a safe manner and to use required safety equipment.	Reprimand to 5-Day Suspension	5-Day Suspension to Removal	14-Day Suspension to Removal
31.	Failure to carry out safety responsibility.	Reprimand	10-Day Suspension to Removal	Removal

NOTES:

- 1/ Normally an oral admonishment is used for the first breach. Maximum penalty for a third breach within 2-year period is 1-day suspension and for a fourth breach in the period is 5-day suspension.
- 2/ When an employee fails to report for duty or to return from leave or furlough and fails to notify management of his or her intentions, and after attempting to do so the activity has been unable to ascertain his or her intentions concerning his or her return to duty, a removal may be initiated in accordance with merit and procedural requirements of this regulation after the passage of a reasonable time (a minimum of 10 calendar days)
- 3/ Actions involving these breaches must be carefully evaluated to assure that the requirements of the Alcohol and Drug Abuse Program are met.
- 4/ There is no breach unless (a) the validity of the debt is established; (b) there has been a failure to either arrange for or

comply with a repayment schedule: and (c) there is a current complaint from the creditor. Suspension is not an authorized corrective action. Maximum corrective action for third and fourth offenses within 2-years period is reprimand with the added warning that a 'continuation of breaches could result in removal."

- 5/ If a supervisor or manager has engaged in an act of discrimination, in an unfair labor practice, or in a prohibited personnel practice, an evaluation will be made of the manner in which he or she generally discharges his/her management responsibilities to determine the appropriate action to be taken.

NOTICE OF REPRIMAND (EXAMPLE)

DOE F 1326.8
(7-79)

U.S. DEPARTMENT OF ENERGY
memorandum

DATE

REPLY TO
ATTN OF

SUBJECT Notice of Reprimand

TO Name
Title
Location

The purpose of this notice is to reprimand you for (name of breach, such as failure to request leave according to established procedure or Insubordination) and to warn you that future such delinquencies on your part may result in a more severe disciplinary action, including suspension or, possibly, removal.

The reason(s) for this reprimand is (are) as follows:

(In these subparagraphs detail what the requirement or regulation was and what action on the part of the employee constituted the breach that caused this action to be taken. as explicit as to dates, witnesses. and the nature of the breach. You may use attached copies of documentary evidence.)

You may grieve this action by filing a grievance under the procedure outlined in DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, or under a labor-management agreement, whichever as appropriate. You may have a representative assist you in your grievance if you desire. If your grievance is filed under the DOE grievance procedure, it must be initiated no later than 7 calendar days from the date you receive this notice. (Name and location of servicing personnel officer, telephone number) will give you all available information about the grievance procedure if you so request.

A copy of this letter of reprimand will be placed in your official personnel folder for a period of 1 year. It will withdrawn after 1 year or upon your separation from the Department of Energy, whichever occurs first. (See negotiated agreement if the employee is included in the bargaining unit.)

Name of the issuing official
Title

cc: Servicing Personnel Office
Official Personnel Folder

NOTICE OF PROPOSED SUSPENSION OF 14 DAYS OR LESS (EXAMPLE)

DOE 3750.1
(7-79)

U.S. DEPARTMENT OF ENERGY

memorandum

DATE

REPLY TO
ATTN OF

SUBJECT Notice of Proposed Suspension for 14 Days or Less

TO Name
Title
Location

This is to notify you that I am proposing that you be suspended from your position of title, series, and grade) for calendar days and to whom, if appropriate, that constitute the reasons for the proposed action. If the proposal is based on an investigative report or other official documents, make direct quotes or attach copies of pertinent documents.)

(In these subparagraphs describe specifically what the employee did that was wrong, including times, dates, places, what occurred and to whom, if appropriate, that constitute the reasons for the proposed action. If the proposal is based on an investigative report or other official documents, make direct quotes or attach copies of pertinent documents.)

you may reply to (name, title, and location of the deciding official) orally and in writing within calendar days after your receipt of this letter. You may submit affidavits and other documentary evidence in support of your reply and you may have an attorney or other representative assist you if you desire. (See the negotiated agreement if the employee is included in the bargaining unit.) You will be allowed up to hours of official time to prepare your reply. You may review the material relied upon to propose this action. Consideration will be given to extending the calendar days and/or hours if you submit a written request to the deciding official, prior to expiration of the time allowed for reply, stating your reasons for desiring more time.

If you have any questions concerning this notice, you may contact (name of servicing personnel officer) By telephoning (number) or by mail at (address).

A written decision will be issued to you at the earliest practicable date after your answer is received, or after expiration of the calendar days limit if you choose not to answer.

Name of proposing official
Title

cc: Servicing Personnel Officer

NOTICE OF DECISION TO SUSPEND FOR 14 DAYS OR LESS (EXAMPLE)

DOE 3750.1
(7-78)

DATE

REPLY TO
ATTN OF

U.S. DEPARTMENT OF ENERGY
memorandum

SUBJECT Notice of Decision to Suspend For 14 Days or Less

To Name
Title
Location

Mr./Ms. _____'s notice of (date) informed you of a proposal to suspend you for _____ days for (state the infraction or transgression).

I have given full consideration to your reply (and reply of your representative, if applicable) of (date). I find, however, that the reasons cited in subparagraphs 1a, b, c and d of Mr./Ms. _____'s letter of (date) are fully supported by the evidence and warrant your suspension. (Even though you did not reply to the proposal, I have thoroughly reviewed all the evidence supporting the proposal and find that the reasons cited are supported and warrant your suspension.) (Specify what in the reply that you found valid and why.) Accordingly, it is my decision that you be suspended for _____ calendar days during the period from (date) to (date). (Accordingly, it is my decision that You not suspended).

You may grieve this action by filing a formal grievance under the grievance procedure outlined in DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, or under a labor management agreement, if appropriate. Such grievance must be initiated no later than _____ calendar days after the effective date of your suspension. (Name of servicing personnel officer and telephone number) will give you all the available information about the grievance procedure upon your request.

Name of deciding official
Title

cc: Servicing Personnel Officer

NOTICE OF PROPOSAL TO REMOVE (EXAMPLE)

DOE F 1325.8
(7-79)

U.S. DEPARTMENT OF ENERGY

memorandum

DATE

REPLY TO
ATTN OF

SUBJECT Notice of Proposal to Remove

TO Name
Title
Location

This is to notify you that I am proposing that you be removed from your position of (title, series, and grade) no earlier than 30 days after your receipt of this letter.

The reasons(s) for your proposed removal is (are) as follows:

(In these subparagraphs describe what the employee did or failed to do, specifically and in detail, that constitute the reason(s) for the proposal. If the reasons are based on official documents, make direct quotes or attach copies of pertinent documents. When proposing an employee's reduction in grade or removal based on unacceptable performance, identify specific instances of unacceptable performance by the employee and the critical elements of the employee's position involved in each instance of unacceptable performance.)

You may reply to (name, title, and address of the deciding official(s)) orally and in writing and you may submit affidavits and other documentary evidence in support of your reply. You may be represented by an attorney or other representative if you desire.

(See negotiated agreement if the employee is included in the bargaining unit.) Any reply you make will be considered in reaching a final decision. You will be given calendar days from your receipt of this notice to present your reply. You will be allowed up to hours of official time to prepare your reply. Consideration will be given to recording the time to reply if you submit a request, in writing to the deciding official stating your reasons for desiring more time, prior to expiration of the time allowed for reply. You have the right to review the material relied upon to propose your removal. (All such material is attached. ; (Or, you may contact (name and address) and he or she will make this material available to you.).

questions concerning this notice, you may contact
ing personnel officer, telephone number, and address).
practicable date after your answer is received, or
n of the time allowed for reply if you choose not to
en decision will be issued to you.

Name of proposing official
Title

Personnel Officer

By substituting the appropriate words, this example may be used
suspensions for more than 14 days, reduction in grade or pay, or
loughs for 30 days or less. This example may also be used to
propose an employee's reduction in grade or removal based on
acceptable performance.

NOTICE OF DECISION TO REMOVE (EXAMPLE)

DOE 3750.1
3-23-83

U.S. DEPARTMENT OF ENERGY

memorandum

DATE

REPLY TO
ATTN OF

SUBJECT Notice of Decision to Remove

TO Name
Title
Location

Mr./Ms. _____'s notice of (date) informed you of a proposal to separate you from your position of (title, series, and grade).

I have given full consideration to the response from you (or your representative, if applicable) (date), and your personal presentation of (date). (Or, even though you did not respond during the specified time period, I have thoroughly reviewed all of the evidence supporting the proposal.) I find that all of the reasons cited in Mr./Ms. _____'s letter of (date) are fully supported by the evidence and warrant your removal to promote the efficiency of the service. (Or, I find that the reasons cited in subparagraph a and c are not supported by the evidence and are dismissed.) (Or, a statement of the findings, whatever they are.) Therefore, it is my decision that you be removed effective at the close of business on (date). (Or, therefore, it is my decision that you be suspended for days during the period from (date) to (date)).

Attached **are** copies of the Merit Systems Protection Board's rules and MSPB Form 20. You may appeal this decision to the Board, (city) field office, (address). In order for your appeal to be considered by the Board it must be submitted no later than 20 calendar days after the effective date of your removal (or state any applicable rights to a negotiated grievance procedure if the employee is included in the bargaining unit).

If you have any questions concerning this letter, contact (name of servicing personnel officer, address, and telephone number).

Name of deciding official
Title

2 Attachments

cc: Servicing Personnel Officer

NOTE: By substituting the appropriate words, this example may be used for suspensions for more than 14 days, reductions in grade or pay, or furloughs for 30 days or less. This example may also be used for reduction in grade or removal based on unacceptable performance.

TERMINATION LETTER (EXAMPLE)

DOE 3750.1
3-23-83

U.S. DEPARTMENT OF ENERGY

memorandum

DATE

REPLY TO
ATTN OF

SUBJECT Termination

TO Name
Title
Location

This is to advise you that after a review of our current needs, we have determined that your services as a (title, Series, and grade) in the (Organizational title) are no longer required. Therefore, your appointment in the Department of Energy will terminate at the close of business on (date).

This action should not be construed in any way as a reflection on you personally. We appreciate the service you have rendered during the course of your employment with the Department.

If you have any questions concerning this notice, please contact (name of the servicing personnel office, address, and telephone number).

Name of supervisor
Title

cc: Servicing Personnel Officer

NOTES: In dismissal cases, constitutional requirements oblige Agencies to provide an employee with hearings if his or her moral character **is impuned** by the stated reasons for dismissal. These rights **arise** only when the stigmatizing reasons for dismissal are recorded in any document which may be disseminated to others either inside or outside Government. For this reason, notices of termination should be mild in tone.

ACTIONS AND EMPLOYEES EXCLUDED FROM COVERAGE

1. SUSPENSION OF 14 DAYS OR LESS.

- a. A suspension of an employee in the interest of national security under title 5, United States Code, section 7532.
- b. An action initiated under title 5, United States Code, section 1206 regarding a prohibited personnel practice.
- c. An action taken under provision of statute, other than one " codified in title 5, United States Code, which excepts the action from subchapter I, chapter 75 of title 5, United States Code.
- d. An action against a reemployed annuitant, excluded by Title 5, Code of Federal Regulations, part 752.

2. REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY OR FURLOUGH FOR 30 DAYS OR LESS.

- a. A suspension or removal of an employee in the interest of national security under title 5, United States Code, section 7532.
- b. A reduction-in-force action under title 5, United States Code, section 3502.
- c. The reduction in grade of a supervisor or manager who has not completed the probationary period under title 5, United States Code, section 3321 (a)(2) if such reduction is to the grade held immediately before becoming such a supervisor or manager.
- d. A reduction in grade or removal based on unacceptable performance under title 5, United States Code, section 4303.
- e. An action initiated under title 5, United States Code, section 1206 regarding a prohibited, personnel practice.
- f. Actions taken under provisions of statute, other than one codified in title 5, United States Code, which excepts the action from subchapter II of chapter 75 of title 5, United States Code.
- g. An action which entitles an employee to grade retention under title 5, Code of Federal Regulations, part 536, and an action to terminate these entitlements.

- h. An action taken or directed by the Office of Personnel Management under title 5, Code of Federal Regulations, part -731 or part 754.
- i. An involuntary retirement because of disability title under title 5, Code of Federal Regulations, part 831.
- j. The following actions specifically excluded by the Office of Personnel Management under title 5, Code of Federal Regulations, part 752:
 - (1) A voluntary action initiated by an employee.
 - (2) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made.
 - (3) Reduction of an employee's rate of pay from a rate which is contrary to law or regulation to a rate which is required or permitted by law or regulation.
 - (4) Action against a reemployed annuitant.
 - (5) Action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which temporarily promoted, or reassigns or demotes the employee to a different position not at a lower grade or level than the position from which temporarily promoted.
 - (6) Cancellation of a promotion to a position not classified prior to the promotion.
 - (7) Placement of an employee serving on an intermittent, part-time, or seasonal basis in a nonduty, nonpay status in accordance with conditions established at the time of appointment.
 - (8) An action which terminates a term promotion at the completion of a period in excess of 2 years but not more than 5 years and returns the employee to the position from which promoted or to a position of equivalent grade and pay in accordance with title 5, Code of Federal Regulations, part 335.

REDUCTION IN GRADE AND REMOVAL BASED ON UNACCEPTABLE PERFORMANCE.

- a. The reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under title 5, United States Code, section 3321(a)(2).

- b. The reduction In grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less excluded by title 5, United States Code 4303(f)(2).
- c. The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions excluded by title 5, United States Code 4303(f)(3).
- d. An action initiated under title 5, United States Code, section 1206 regarding a prohibited personnel practice.
- e. A reduction in grade or removal of an employee in the interest of national security under title 5, United States Code, part 7532.
- f. An action taken under provision of a statute, other than one codified in title 5, United States Code, which excepts the action from provisions of title 5, United States Code.
- g. An action which terminates a term promotion at the completion of a period in excess of 2 years but not more than 5 years and returns the employee to the position from which promoted or to a different position of equivalent grade and pay in accordance with title 5, Code of Federal Regulations, part 335.
- h. Reduction-in-force action governed by title 5, Code of Federal Regulations, part 351.
- i. An adverse action for cause taken under title 5, Code of Federal Regulations, part 752.
- j. An involuntary retirement because of disability under part 831.
- k. The following actions specifically excluded by the Office of Personnel Management under title 5, Code of Federal Regulations, part 432:
 - (1) A voluntary action initiated by the employee.
 - (2) A termination in accordance with terms specified as a condition of employment at the time the appointment was made.
 - (3) An action against a reemployed annuitant.

- (4) An-action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted.

U.S. Department of Energy
Washington, D.C.

PAGE CHANGE

DOE 3750.1 Chg 1

3-11-85

SUBJECT: WORKFORCE DISCIPLINE

-
1. PURPOSE. To transmit a change of wording to Attachment 2 of DOE 3750.1, WORKFORCE DISCIPLINE, of 3-23-83.
 2. EXPLANATION OF CHANGE. The word "submitted " replaces the word "initiated" in the third paragraph of Attachment 2 to conform to the procedural requirements in DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES.
 3. FILING INSTRUCTIONS.
 - a.

<u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Dated</u>
Atch 2, page 1 (and 2)	3-23-83	Atch 2, page 1 (and 2)	3-11-85
 - b. After filing the attached page, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



WILLIAM S. HEFFELFINGER
Director of Administration

DISTRIBUTION:
All Departmental Elements

INITIATED BY:
Office of Personnel

United States Government

Department of Energy

memorandum

NOTICE OF REPRIMAND

DATE

REPLY TO
ATTN OF

SUBJECT Notice of Reprimand

TO Name
Title
Location

The purpose of this notice is to reprimand you for (name of breach, such as failure to request leave according to established procedure or insubordination) and to warn you that future such delinquencies on your part may result in a more severe disciplinary action, including suspension or, possibly, removal.

The reason(s) for this reprimand is (are) as follows:

(In these subparagraphs detail what the requirement or regulation was and what action on the part of the employee constituted the breach that caused this action to be taken. Be explicit as to dates, witnesses, and the nature of the breach. You may use attached copies of documentary evidence.)

You may grieve this action by filing a grievance under the procedure outlined in DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, or under a labor management agreement, whichever is appropriate. You may have a representative assist you in your grievance if you desire. If your grievance is filed under the grievance procedure, it must be submitted no later than 7 calendar days from the date you receive this notice. (Name and location of servicing personnel officer, telephone number) will give you all available information about the grievance procedure if you so request.

A copy of this letter of reprimand will be placed in your official personnel folder for a period of 1 year. It will be withdrawn after 1 year or upon your separation from the Department of Energy, whichever occurs first. (See negotiated agreement if the employee is included in the bargaining unit.)

Name of the issuing official
Title

cc: Servicing Personnel Office
Official Personnel Folder

U.S. Department of Energy
Washington, D. C.

PAGE CHANGE

DOE 3750.1 Chg 2

1-6-86

SUBJECT: WORK FORCE DISCIPLINE

1. PURPOSE. To transmit revised pages to DOE 3750.1, WORK FORCE DISCIPLINE, of 3-23-83.
2. EXPLANATION OF CHANGE. Under the provisions of title 5, United States Code, section 7701(g), the Merit Systems Protection Board may require Federal departments and agencies to pay reasonable attorney fees incurred by employees who successfully contest actions against them if such fees are in the interest of justice. A number of successful appeals could thus become a significant cost item to the Department of Energy (DOE). This necessitates a central review procedure to ensure that all petitions for attorney fees are in accord with the law **and** are reasonable; that is, the review should take into account cost factors such as where the employee and attorney are located, how much time an employee appeal would normally require, **and** the nature of any attorney-client fee **agreement**. Accordingly, Chapter IV, "Representation, Appeals, and Grievances," has been modified to direct all attorney fee petitions, accompanied by proposed DOE responses and supporting documentation, to the Office of the General Counsel for review and concurrence before payment. In paragraph 6, the General Counsel has been assigned responsibility for reviewing all attorney fee petitions **and** concurring in DOE responses.

3. FILING INSTRUCTIONS.

a. <u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Dated</u>
3	3-23-83	3	3-23-83
4	3-23-83	4	1-6-86
5 (and 6)	3-23-83	5 (and 6)	3-23-83
i (and ii)	3-23-83	i (and ii)	1-6-86
IV-1	3-23-83	IV-1	3-23-83
IV-2	3-23-83	IV-2,	1-6-86

- b. After filing the attached pages, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



HARRY L. PEEBLES
Acting Director of Administration

DISTRIBUTION:
All Departmental Elements

INITIATED BY:
Office of Personnel

TABLE OF CONTENTS

<u>CHAPTER I - GENERAL</u>	Page
1. Taking Disciplinary Actions Constructively	I-1
2. Technical Considerations	I-1
3. Delivery of Notices	I-3
4. Recording Actions	I-3
5. Official Time	I-3
 <u>CHAPTER II - TYPES OF Disciplinary ACTIONS, COVERAGE, AND PROCEDURES</u>	
1. Oral Admonishment	II-1
2. Notice of Reprimand	II-1
3. Suspension for 14 Days or Less	II-1
4. Removal, Suspension for More Than 14 Days, or Reduction In Grade	II-2
5. Reduction in Grade or Removal Based on Unacceptable Performance	II-5
6. Termination	II-7
 <u>CHAPTER III - NONDISCIPLINARY ADVERSE ACTIONS</u>	
1. Coverage	III-1
2. Removal, Reduction in Grade or Pay, or Furlough for 30 days or Less	III-1
3. Procedures	III-1
 <u>CHAPTER IV - REPRESENTATION, APPEALS, AND GRIEVANCES</u>	
1. Representation	IV-1
2. Appeals	IV-1
3. Grievances	IV-2
14. Attorney Fees	IV-2
 ATTACHMENTS	
1. Guide to Selecting Corrective Action in Discipline Cases'	
2. Notice of Reprimand	
3. Notice of Proposed Suspension of 14 Days or Less	
4. Notice of Decision to Suspend 14 Days or Less	
5. Notice of Proposal to Remove	
6. Notice of Decision to Remove	
7. Termination Letter	
8. Actions and Employees Excluded from Coverage of this Order	

Vertical line denotes change.

- d. Days. Calendar days.
- e. Deciding Official. The management official designated to make the final decision on a notice of proposed action issued by a Department official at a lower management level.
- f. Proposing Official. The supervisor manager who issues a notice of proposed adverse action to an employee. (The supervisor or manager who issues an admonishment or reprimand to an employee is an issuing official.)
- g. Oral Admonishment. A disciplinary discussion between a management official or supervisor having the authority to take disciplinary action and an employee subject to that authority.
- h. Reprimand. A formal disciplinary action notice issued to an employee by a management official or supervisor having disciplinary authority with respect to that employee.

6. RESPONSIBILITIES.

- a. Heads of Departmental Elements with Delegated Personnel Authority shall:
 - (1) Administer a fair, impartial, uniform, and regulatorily proper work force discipline program within their jurisdiction.
 - (2) Assure that the rules and other conditions of employment are readily available to all employees under their jurisdiction.
 - (3) Assure that supervisors and management officials consider the guide contained in Attachment 1, and when the limitation on corrective actions is to be exceeded, assure that it is properly authorized.
 - (4) Issue notices of decision on adverse actions proposed by subordinate officials against employees under their jurisdiction.
 - (5) Approve or disapprove requests to extend the time to answer notices of proposed actions.
 - (6) Approve or disapprove requests to extend the notice of proposed action, not to exceed 30 additional days, in cases of reduction in grade and in cases of removal based on unacceptable performance.
 - (7) Advise the servicing personnel office whenever any of the above authorities are redelegated. All redelegations must be in writing.
- b. Director of Administration provides overall direction and administration of the Department's work force discipline program.

- c. General Counsel shall review all petitions for payment of attorney fees for compliance with statutory and regulatory requirements and will concur on all DOE responses.
- d. General Counsel or Chief Counsel of a Field Organization shall provide legal advice and assistance to servicing personnel offices. In coordination with servicing personnel offices, represents or participates in the preparation for representation of the DOE before the Board.
- a. Director of Personnel shall:
- (1) Develop the work force discipline program of the Department and provide staff assistance and advice on matters covered by this Order.
 - (2) Implement actions directed by the Office of Personnel Management and other outside authorities.
 - (3) Determine whether or not to seek review of Initial decisions issued by presiding officials of the Board.
 - (4) Request approval of the Office of Personnel Management to extend the notice period for a reduction in grade or removal based upon unacceptable performance beyond the additional 30 days granted by officials in paragraph 6a.
- f. Servicing Personnel Offices shall:
- (1) Provide technical advice and assistance to supervisors and management officials in the implementation of this program.
 - (2) Review all disciplinary actions for consistency with rules, regulations, and Departmental procedures.
 - (3) Inform employees of their employment obligations.
 - (4) Provide advice and assistance on procedures to employees who are subject to disciplinary or adverse actions.
 - (5) After giving advance notice to the Director of personnel, coordinate with the General Counsel or chief counsel of a field organization in order to provide for representation of the Department at hearings before the Board.
- g. Supervisors and Managers shall:
- (1) Keep employees informed of rules, regulations, and standards of conduct, and maintain order and discipline within the framework of established procedures.

Vertical line denotes change.

3.23.83

- (2) Gather, analyze, and consider carefully all facts and circumstances before taking or recommending corrective action.
 - (3) Issue oral admonishments, notices of reprimand, and initiate proposed actions after consultation with the appropriate servicing personnel office.
7. STAFF ADVICE IN CONNECTION WITH TAKING ACTIONS. Managers are encouraged to seek advice and assistance in effecting actions, as needed, from the servicing personnel office. All letters of reprimand, adverse action proposals and decision letters, and letters of termination must be concurred in by the servicing personnel office prior to delivery to the employee.



WILLIAM S. HEFFELFINGER
Director of Administration

CHAPTER IV

REPRESENTATION. APPEALS. AND GRIEVANCES

1. REPRESENTATION.

- I. Employees who have received a notice of proposed disciplinary action are entitled to be represented by an attorney or other representatives. In addition, employees may be accompanied by a representative when making an oral reply to a notice or proposed adverse action. If an employee of the Department is selected as a representative and that person is willing to serve, the representative's supervisor, acting independently or in concert with the supervisor of the selecting employee, may disallow the employee's choice on the basis that the:
 - (1) Individual activities as a representative would cause a conflict of interest or position; or
 - (2) Release of the employee from his or her official position would give rise to unreasonable costs to the Government; or
 - (3) Individual priority work assignments preclude his or her release from official duties.
- b. The terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.
- c. This paragraph does not apply to representation during appeals before the board and in cases of disciplinary actions that are grieved. (See title 5, Code of Federal Regulations, section 1201.31, for procedures governing representation during appeals before the board and DOE 3771.1 concerning representation during grievances.)

2. APPEALS.

- a. Employees in the Competitive Service or Who Are Preference Eligibles.
Employees are entitled to appeal the following actions to the board beginning with the day after the effective date of the action until not later than 20 calendar days after the effective date:
 - (1) Adverse actions, except suspensions of 14 days or less;
 - (2) Reduction in grade or removal based on unacceptable performance; and
 - (3) Adverse actions or reduction in grade or removal based on unacceptable performance coupled with an allegation of prohibited discrimination.

- b. When a decision letter is issued to an employee on a matter appealable to the board, the employee shall be provided:
 - (1) Notice of the time limits for appealing to the board and the address of the appropriate board office for filing the appeal;
 - (2) A copy of the board's regulations;
 - (3) A copy of the Merit Systems Protection Board Form 20, "Merit Systems Protection Board Appeals Form"; and
 - (4) Notice of any applicable rights to a grievance procedure.
 - c. Petitions for Review. A request to the board to review the initial decision of a presiding official shall be recommended by the servicing personnel office to the Director of Personnel and arrive as soon as possible after receipt of the initial decision. Such recommendations shall establish that:
 - (1) New and material evidence is available that, despite due diligence, was not available when the record was closed; or
 - (2) The decision of the presiding official is based on an erroneous interpretation of statute or regulation.
 - d. Prohibited Personnel Practice. Any employee who believes that a disciplinary or corrective action taken against him or her is a prohibited personnel practice under Title 5, United States Code, section 2302, may file a complaint with the special counsel of the board.
3. GRIEVANCES. See DOE 3771.1 concerning grievances. .
4. ATTORNEY FEES. If a presiding official or the full Board fails to sustain in DOE action on appeal, the appellant may request payment of attorney fees under title 5, Code of Federal Regulations, section 1201.37, pursuant to the authority in title 5, United States Code, section 7701(g), or under title 42, United States Code, section 2000e.5(k) if discrimination is found under title 5, United States Code, section 2302(b)(1). Title 5, United States Code, section 7701(g) authorizes payment of reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice. The Office of General Counsel will review all petitions for payment of attorney fees for statutory and regulatory compliance and will concur in all DOE responses. Accordingly, all such petitions will be forwarded immediately to the Assistant General Counsel for General Law (GC-44): the petitions will be accompanied by proposed Departmental responses and by supporting documentation, such as local attorney fee schedules or other comparative data. The General Counsel will inform the Director of Personnel of DOE responses and the subsequent findings of the Board.

Vertical line denotes change.

U.S. Department of Energy
Washington, D.C.

PAGE CHANGE

DOE 3750.1 Chg 3

3-21-89

SUBJECT: WORK FORCE DISCIPLINE

1. PURPOSE. To transmit revised pages to DOE 3750.1, WORK FORCE DISCIPLINE, of 3-23-83.
2. EXPLANATION OF CHANGES. To:
 - a. Add appropriate penalties to the guide to selecting corrective action when an employee is found through a positive drug test to have used illegal drugs (Attachment 1).
 - b. Provide an example of language that can be used in letters of termination issued to probationary employees (Attachment 8).
 - c. Renumber current Attachment 9, "Actions and Employees Excluded From Coverage," to Attachment 9.
 - d. Revise basic Order to reflect organizational and other administrative-type changes.
3. FILING INSTRUCTIONS.

<u>Remove Page</u>	<u>Date</u>	<u>Insert Page</u>	<u>Date</u>
1 thru 4	3-23-\$33	1 thru 4	3-21-89
i (and ii)	1-6-85	i (and ii)	3-21-89
II-5 thru II-7 (and II-8)	3-23-83	II-5 thru II-7 (and II-8)	3-21-89
Atch 1, Pages 11 and 12	3-23-\$33	Atch 1, pages 11 thru 13 (and 14)	3-21-89
Atch 8, Pages 1 thru 4	3-23-83	Atch 8, Pages 1 and 2	3-21-99
		Atch 9, Pages 1 thru 3 (and 4)	3-21-89

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- b. After filing the attached pages, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



LAWRENCE F. DAVENPORT
Assistant Secretary
Management and Administration

DISTRIBUTION:
All Departmental Elements

INITIATED BY:
Office of Personnel and
Career Development

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 3750.1

3-23-83

Change 3: 3-21-89

SUBJECT: WORK FORCE DISCIPLINE

-
1. PURPOSE. To provide guidance and procedures and state responsibilities for maintaining work force discipline in the Department of Energy (DOE).
 2. REFERENCE.
 - a. Title 5, Code of Federal Regulations, parts 432, 735, and 752, which provides the statutory procedures for adverse actions and establishes ethical and other conduct standards and responsibilities for Federal employees.
 - b. Federal Personnel Manual (FPM) chapters 751 and 752, which state the Office of Personnel Management regulations and requirements for disciplinary and adverse actions.
 - c. DOE 3710.1, LABOR-MANAGEMENT RELATIONS PROGRAM FOR FEDERAL EMPLOYEES, of 1-16-81, which outlines procedures for the administration of the Federal employee labor relations program.
 - d. DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, of 7-2-81, which provides guidance and instructions for establishing and administering the grievance system of the DOE.
 3. COVERAGE AND EXCLUSIONS. This Order applies to all paid employees within the Department except:
 - a. Employees covered by sections 621(b) and (d) of Public Law 95-91, Department of Energy Organization Act;
 - b. Administrative Law Judges;
 - c. Experts and consultants;
 - d. Employees occupying positions above the GS-15 or GM-15 grade level;
 - e. Employees in the Senior Executive Service;
 - f. Presidential appointees;
 - g. Employees occupying positions in schedule C of part 213 of Title 5, Code of Federal Regulations.

Vertical line denotes Change.

DISTRIBUTION:

All Departmental Elements

INITIATED BY:

Office of Personnel and
Career Development

4. POLICY.

- a. Disciplinary actions shall be taken only for the purposes of correcting: unacceptable conduct, behavior on the job, or situations that adversely affect job performance; violations of laws, rules, or regulations.
- b. Actions shall be taken for unacceptable performance or nonperformance of assigned duties and failure to properly discharge inherent or assigned responsibilities.
- c. Unless proposed by the Secretary, all final decisions to take adverse actions (including reductions in grade and removals based on unacceptable performance) must be made by a higher level official in the chain of command than the official who proposed the action.

5. DEFINITIONS.

- a. Adverse Action. A personnel action which reduces an employee's basic pay or grade, or which involuntarily separates the employee from the Federal service, or which involuntarily places the employee in a nonpay, nonduty status. Adverse actions may result from disciplinary or nondisciplinary situations. Adverse actions are:
 - (1) Suspension. An action which places an employee, for disciplinary reasons, in a temporary status without duties and pay.
 - (2) Reduction in Grade or Pay. Actions taken that change an employee from a position at one grade and rate of basic pay to another position at a lower grade and rate of basic pay. (See Attachment 9 for reductions in grade or pay excluded from coverage of this Order.)
 - (3) Furlough. The placing of an employee in a temporary status, without duties and pay because of lack of work or funds or for other nondisciplinary reasons.
 - (4) Removal. The separation of an employee from his or her position in the Department for cause.
- b. Board. Merit Systems Protection Board.
- c. Cause. A recognizable offense against the employee-employer relationship. May be reasons that are personal to the employee such as on or off the job misconduct, inefficiency, or physical or mental inability to perform the duties of the position. There may also be impersonal reasons such as an emergency situation necessitating a short furlough or the need to correct a merit promotion error. Some causes have been specified by rules, Executive order, or regulation. A cause must also promote the efficiency of the service.

Vertical line denotes change.

- d. Days. Calendar days.
- e. Deciding Official. The management official designated to make the final decision on a notice of proposed action issued by a Department official at a lower management level.
- f. Proposing Official. The supervisor or manager who issues a notice of proposed adverse action to an employee. (The supervisor or manager who issues an admonishment or reprimand to an employee is an issuing official.)
- g. Oral Admonishment. A disciplinary discussion between a management official or supervisor having the authority to take disciplinary action and an employee subject to that authority.
- h. Reprimand. A formal disciplinary action notice issued to an employee by a management official or supervisor having disciplinary authority with respect to that employee.'

6. RESPONSIBILITIES.

- a. Heads of Departmental Elements with Delegated Personnel Authority shall:
 - (1) Administer a fair, impartial, uniform, and regulatory proper work force discipline program within their jurisdiction.
 - (2) Assure that the rules and other conditions of employment are readily available to all employees under their jurisdiction.
 - (3) Assure that supervisors and management officials consider the guide contained in Attachment 1, and when the limitation on corrective actions is to be exceeded, assure that it is properly authorized.
 - (4) Issue notices of decision on adverse actions proposed by subordinate officials against employees under their jurisdiction.
 - (5) Approve or disapprove requests to extend the time to answer notices of proposed actions.
 - (6) Approve or disapprove requests to extend the *notice* of proposed action, not to exceed 30 additional days, in cases of reduction in grade and in cases of removal based on unacceptable performance.
 - (7) Advise the servicing personnel office whenever any of the above authorities are redelegated. All redelegations must be in writing.

- b. Deputy Assistant Secretary for Human Resource Management provides overall direction and administration of the Department's work force discipline program.

Vertical line denotes change.

- c. General Counsel shall review all petitions for payment of attorney fees ~~for compliance~~ with statutory and regulatory requirements and will concur on all DOE responses.
- d. General Counsel or Chief Counsel of a Field Organization shall provide legal advice and assistance to servicing personnel offices. In coordination with servicing personnel offices, represents or participates in the preparation for representation of the DOE before the Board.
- e. Director of Personnel and Career Development shall:
 - (1) Develop the work force discipline program of the Department and provide staff assistance and advice on matters covered by this Order.
 - (2) Implement actions directed by the Office of Personnel Management and other outside authorities.
 - (3) Determine whether or not to seek review of initial decisions issued by presiding officials of the Board.
 - (4) Request approval of the Office of Personnel Management to extend the notice period for a reduction in grade or removal based upon unacceptable performance beyond the additional 30 days granted by officials in paragraph 6a.
- f. Servicing Personnel Offices shall:
 - (1) Provide technical advice and assistance to supervisors and management officials in the implementation of this program.
 - (2) Review all disciplinary actions for consistency with rules, regulations, and Departmental procedures.
 - (3) Inform employees of their employment obligations.
 - (4) Provide advice and assistance on procedures to employees who are subject to disciplinary or adverse actions.
 - (5) After giving advance notice to the Director of Personnel and career Development, coordinate with the General Counsel or chief counsel of a field organization in order to provide for representation of the Department at hearings before the Board.
- 3. Supervisors and Managers shall:
 - (1) Keep employees informed of rules, regulations, and standards of conduct, and maintain order and discipline within the framework of established procedures.

Vertical line denotes change.

TABLE OF CONTENTS

<u>CHAPTER I - GENERAL</u>	<u>PAGE</u>
1. Taking Disciplinary Actions Constructively	I -1
2. Technical Considerations	I -1
3. Delivery of Notices	I -3
4. Recording Actions	I -3
5. Official Time	I -3
 <u>CHAPTER 11 - TYPES OF DISCIPLINARY ACTIONS, COVERAGE, AND PROCEDURES</u>	
1. Oral Admonishment	11-1
2. Notice of Reprimand	11-1
3. Suspension for 14 Days or Less	11-1
4. Removal, Suspension for More Than 14 Days, or Reduction in Grade	11-2
5. Reduction in Grade or Removal Based on Unacceptable Performance	11-5
6. Termination	11-7
 <u>CHAPTER 111 - NONDISCIPLINARY ADVERSE ACTIONS</u>	
1. Coverage	111-1
2. Removal, Reduction in Grade or Pay, or Furlough for 30 days or Less	111-1
3. Procedures	111-1
 <u>CHAPTER IV -- REPRESENTATION, APPEALS, AND GRIEVANCES</u>	
1. Representation	IV-1
2. Appeals	IV-1
3. Grievances	IV-2
4. Attorney Fees	IV-2
 <u>ATTACHMENTS</u>	
1. Guide to Selecting Corrective Action in Discipline Cases	
2. Notice of Reprimand	
3. Notice of Proposed Suspension of 14 Days or Less	
4. Notice of Decision to Suspend 14 Days or Less	
5. Notice of Proposal to Remove	
6. Notice of Decision to Remove	
7. Termination Letter	
8. Termination of Employment Letter	
9. Actions and Employees Excluded from Coverage of this Order	

Vertical line denotes change.

- (d) Before taking any action in the above situations, consult with the Office of Personnel and Career Development, Personnel Policies and Programs Division, Employee/Labor Management Relations and Safety Branch.

(3) NOTICE OF DECISION.

- (a) The notice of decision shall be issued at the earliest practicable date after receipt of the employee's reply or expiration of the time allocated for the employee's answer. In arriving at the decision, only the reasons specified in the notice of proposed action and any answer of the employee or his or her representative made to the designated official will be considered.
- (b) The decision shall state which reason(s) were relied upon (tell the employee which reasons in the proposal notice were determined to be valid and which were dismissed and why), and if the proposed action is determined to be warranted, the effective date of the action. No new reasons may be added to the notice of decision.
- (c) It shall contain information regarding appeal and representation rights and the name of the individual who the employee may, contact concerning appeal rights and procedures.
- (d) It shall be delivered to the employee at or before the time the action becomes effective. (Attachment 6 contains an example of a notice of decision.)

5. REDUCTION IN GRADE OR REMOVAL BASED ON UNACCEPTABLE PERFORMANCE. An employee may be reduced in grade or removed at any time during the performance appraisal cycle that the employee's performance in one or more critical elements of the job becomes unacceptable. The procedures and requirements for such actions are separate from those contained in paragraph 4.

- a. Coverage. This paragraph applies to all employees, except those excluded in paragraph 3 of Attachment 9.
- b. Reasonable Time. Before proposing a reduction in grade or removal under this paragraph, the employee shall be informed of the critical element(s) for which performance is unacceptable, and given a reasonable time to demonstrate acceptable performance for the critical element(s) identified as unacceptable. Reasonable time means an amount of time commensurate with the duties and responsibilities of the employee's job which is sufficient *to allow the* employee to show whether he or she can meet minimum performance standards.
- c. One-year Limitation. Title 5, United States Code, section 4303(c)(2), places a 1-year time restriction on the age of instances used to support the demotion or removal of an employee for unacceptable performance.

Vertical line denotes change.

d. Procedures.

- (1) Notice of Proposed Action. An employee whose reduction in grade or removal is proposed under this paragraph is entitled to 30 days advance written notice of the proposed action. The notice shall identify the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical elements of the employee's position involved in each instance of unacceptable performance. It shall inform the employee of the right to:
 - (a) Be represented by an attorney or other representative. (See FPM chapter 752, DOE 3710.1, and the labor management agreement if the employee is included in a bargaining unit.)
 - (b) A reasonable time to answer orally and in writing.
- (2) Extension of Notice Period. The 30-day advance notice period may be extended for not more than 30 additional days by an authorized Departmental official (see page 3, paragraph 6a(6)). Requests to extend further the notice period shall be referred by the deciding official to the Director of Personnel and Career Development, who may request prior approval from the Office of Personnel Management.
- (3) Notice of Decision. The written decision to retain, reduce in grade, or remove an employee shall be issued within 30 days after the date of expiration of the advance notice. In the case of a reduction *in* grade or removal under this paragraph, the written decision shall specify the instances of unacceptable performance by the employee on which the reduction in grade or removal is based. Instances of unacceptable performance more than 1-year old as of the date of *the* notice of proposal may not be used as a basis for action in connection with the decision. It shall contain information regarding appeals and representation rights and the name of the individual who the employee may contact concerning appeal rights and procedures. It shall be delivered to the employee at or before the time the action becomes effective.
- (4) Performance Improvement. If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from arty Departmental records relating to the employee.

Vertical line denotes change.

6. TERMINATION.

- a. Coverage. The following employees are covered by this paragraph:
- (1) All employees in the competitive service who are serving a probationary or trial period under an initial appointment or who have not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less.
 - (2) All employees in the excepted service, excepted preference eligibles who have completed 1 year of current continuous service in the same or similar positions.
- b. Procedures. This paragraph applies to, but is not limited to, removals based on conduct related factors or disciplinary actions that involve both conduct and performance related factors. If the employee is being reduced in grade or removed for unacceptable performance, the requirements of paragraph 5 of this Order apply for excepted service employees who have completed 1 year of current continuous employment in the same or similar positions.
- c. Notice of Termination. The notice must state the reasons for the termination. (Attachment 7 contains an example of a notice of termination except for probationary employees. Attachment 8 provides an example for termination of probationary employees.)

Vertical line denotes change.

	<u>CAUSE</u>	<u>ACTION</u>		
		<u>First Breach</u>	<u>Second Breach</u>	<u>Third Breach</u>
	employment receiving lower salary. A voluntary gift of a minimal value or a donation in a minimal amount is not prohibited when made on a special occasion.			
29.	Discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any 1-year period or any other pattern of discourteous conduct.	Reprimand to 14-Day Suspension	10-Day to 14-Day Suspension	14-Day Suspension to Removal
30.	Failure to work in a safe manner and to use required safety equipment.	Reprimand to 5-Day Suspension	5-Day Suspension to Removal	14-Day Suspension to Removal
31.	Failure to carry out safety responsibility.	Reprimand	10-Day Suspension to Removal	Removal
32.	A verified positive test result to a drug test administered under Departmental Authority: 6/			
	a. Where the test was administered under random testing procedures.	Reprimand to Removal	Removal	
	b. Where the test was taken voluntarily.	Reprimand to Removal	Removal	
	c. Where the test was administered because employee conduct or behavior indicating a reasonable suspicion that the employee uses illegal drugs.	Reprimand to Removal	Removal	

Vertical line denotes change.

<u>CAUSE</u>	<u>ACTION</u>		
	<u>First Breach</u>	<u>Second Breach</u>	<u>Third Breach</u>
d. Where the test was administered after employee involvement in an incident or occurrence the consequences of which (1) posed a hazard or danger to employees, the public, public or private property, to the natural environment, or Departmental facilities; (2) had an adverse effect on agency operations; or (3) represented a serious breach of Departmental rules, regulations, orders, or other directives.	Reprimand to Removal	Removal	

NOTES:

- 1/ Normally an oral admonishment is used for the first breach. Maximum penalty for a third breach within 2-year period is 1-day suspension and for a fourth breach in the period is a 5-day suspension.
- 2/ When an employee fails to report for duty or to return from leave or furlough and fails to notify management of his or her intentions, and after attempting to do so the activity has been unable to ascertain his or her intentions concerning his or her return to duty, a removal may be initiated in accordance with merit and procedural requirements of this regulation after the passage of a reasonable time (a minimum of 10 calendar days).
- 3/ Actions involving these breaches must be carefully evaluated to assure that the requirements of the Alcohol and Drug Abuse Program are met.
- 4/ There is no breach unless (a) the validity of the debt is established; (b) there has been a failure to either arrange for or comply with a repayment schedule; and (c) there is a current complaint from the creditor. Suspension is not authorized correction action. Maximum corrective action for third and fourth offenses within a 2-year period is reprimand with the added warning that a "continuation of breaches could result in removal."

Vertical line denotes change.

- 5/ If a supervisor or manager has engaged in an act of discrimination, in an unfair labor practice, or in a prohibited personnel practice, an evaluation will be made of the manner in which he or she generally discharges his/her management responsibilities to determine the appropriate action to be taken.
- 6/ An employee having a verified positive test result for use of an illegal drug may be issued a notice of removal if he/she cannot be retained in his/her position because of the sensitive nature of the job and there is no alternate work assignment available. A 'Verified Positive Test Result' means a test result that has been screened positive by a Food and Drug Administration approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory test approved by the Department of Health and Human Services), and evaluated by a Medical Review Officer.

For further guidance on personnel actions concerning employee involvement in the use of illegal drugs see DOE 3792.3, DRUG-FREE FEDERAL WORKPLACE TESTING IMPLEMENTATION PROGRAM, Chapter III, paragraphs 5d(3) and 5e(1) through 5e(4).

TERMINATION OF EMPLOYMENT LETTER (EXAMPLE)

M a r i a s c
. l a a l

United States Government

Department of Energy

memorandum

DATE

REPLY To
ATTN OF

SUBJECT Termination of Employment

To Name
Title
Position

This memorandum is your formal notice that, in accordance with provisions of 5 CFR, section 315.804, your employment at the Department of Energy will be terminated during your current probationary period at the close of business on date, for the following reasons:

1. You were absent from work without excuse on the following occasions and were consequently placed on Absent without Leave (AWOL) status:

June 6, 1988
June 15, 1988
June 8, 1988

(State how the conduct was inappropriate.)

Your unscheduled absences did not comply with authorized Departmental leave procedures.

(State what the impact of the conduct/performance was.)

Because of these absences, the effective and efficient operation of the division was diminished.

2. You have failed to submit your monthly report on time for three (3) of the last five (5) months. This conduct does not demonstrate satisfactory performance of your position's performance standards. Your actions caused the late submission of the office monthly report on three (3) occasions.

As authorized by 5 CFR, section 315.806, you have the right to appeal this termination to the Merit Systems Protection Board (MSPB) if you believe that the action is being taken against you because of your marital status or for partisan political reasons. Should your appeal to the board be based on either or both of these situations, you may supplement your allegation with an appropriate discrimination complaint if you further believe that your termination was also influenced by your race, color, sex, religion, national origin, physical handicap, or age if you are at least forty (40) years old.

Vertical line denotes change.

A copy of the MSPB regulations is enclosed for your information. You are advised that in order to be timely filed, appeals must be submitted to the board within twenty (20) days of the effective date of the action being appealed.

Name of the issuing official
Title

cc: Servicing Personnel Office

NOTE: Regulations at 5 CFR, section 315.804 require that termination notices to probationary employees as a minimum include specific conclusions as to the inadequacies of the employees performance or conduct.

Vertical line denotes change.

ACTIONS AND EMPLOYEES EXCLUDED FROM COVERAGE

1. SUSPENSION OF 14 DAYS OR LESS.

- a. A suspension of an employee in the interest of national security under title 5, United States Code, section 7532.
- b. An action initiated under title 5, United States Code, section 1206 regarding a prohibited personnel practice.
- c. An action taken under provisions of a statute, other than one codified in title 5, United States Code, which excepts the action from subchapter I, chapter 75 of title 5, United States Code.
- d. An action against a reemployed annuitant, excluded by Title 5, Code of Federal Regulations, part 752.

2. REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY OR ~~FURLOUGH~~ FOR 30 DAYS OR LESS.

- a. A suspension or removal of an employee in the interest of national security under title 5, United States Code, section 7532.
- b. A reduction-in-force action under title 5, United States Code, section 3502.
- c. The reduction in grade of a supervisor or manager who has not completed the probationary period under title 5, United States Code, section 3321(a)(2) if such reduction is to the grade held immediately before becoming such a supervisor or manager.
- d. A reduction in grade or removal based on unacceptable performance under title 5, United States Code, section 4303.
- e. An action initiated under title 5, United States Code, section 1206 regarding a prohibited personnel practice,
- f. Actions taken under provisions of a statute, other than one codified in title 5, United States Code, which excepts the action from subchapter II of chapter 75 of title 5, United States Code.
- g. An action which entitles an employee to grade retention under title 5, Code of Federal Regulations, part 536, and an action to terminate these entitlements.
- h. An action taken or directed by the Office of Personnel Management under title 5, Code of Federal Regulations, part 731 or part 754.

Vertical line denotes change

- i. An involuntary retirement because of disability title under title 5, Code of Federal Regulations, part 831.
 - j. The following actions specifically excluded by the Office of Personnel Management under title 5, Code of Federal Regulations, part 752:
 - (1) A voluntary action initiated by an employee.
 - (2) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made.
 - (3) Reduction of an employee's rate of pay from a rate which is contrary to law or regulation to a rate which is required or permitted by law or regulation.
 - (4) Action against a reemployed annuitant.
 - (5) Action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which temporarily promoted, or reassigns or demotes the employee to a different position not at a lower grade or level than the position from which temporarily promoted.
 - (6) Cancellation of a promotion to a position not classified prior to the promotion.
 - (7) Placement of an employee serving on an intermittent, part-time, or seasonal basis in a nonduty, nonpay status in accordance with conditions established at the time of appointment.
 - (8) An action which terminates a term promotion at the completion of a period in excess of 2 years but not more than 5 years and returns the employee to the position from which promoted or to a position of equivalent grade and pay in accordance with title 5, Code of Federal Regulations, part 335.
3. REDUCTION IN GRADE AND REMOVAL BASED ON UNACCEPTABLE PERFORMANCE.
- a. The reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under title 5, United States Code, section 3321(a)(2).
 - b. The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less excluded by title 5, United States Code 4303(f) (2).

Vertical line denotes change.

- c. The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions excluded by title 5, United States Code 4303(f)(3).
- d. An action initiated under title 5, United States Code, section 1206 regarding a prohibited personnel practice.
- e. A reduction in grade or removal of an employee in the interest of national security under title 5, United States Code, part 7532.
- f. An action taken under provisions of a statute, other than one codified in title 5, United States Code, which excepts the action from provisions of title 5, United States Code.
- g. An action which terminates a term promotion at the completion of a period in excess of 2 years but not more than 5 years and returns the employee to the position from which promoted or to a different position of equivalent grade and pay in accordance with title 5, Code of Federal Regulations, part 335.
- h. Reduction-in-force action governed by title 5, Code of Federal Regulations, part 351.
- i. An adverse action for cause taken under title 5, Code of Federal Regulations, part 752.
- j. An involuntary retirement because of disability under part 831.
- k. The following actions specifically excluded by the Office of Personnel Management under title 5, Code of Federal Regulations, part 432:
 - (1) A voluntary action initiated by the employee.
 - (2) A termination in accordance with terms specified as a condition of employment at the time the appointment was made.
 - (3) An action against a reemployed annuitant.
 - (4) An action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted.

Vertical line denotes change.

DOE 3750.1 Chg 4

8-24-90

SUBJECT: WORK FORCE DISCIPLINE

-
1. PURPOSE. To transmit revisions to Attachment 1 of DOE 3750.1, WORK FORCE DISCIPLINE, of 3-23-83.
 2. EXPLANATION OF CHANGE. To revise assessments of corrective action against employees who sell drugs or intoxicants on duty or DOE property or who report for duty drunk or impaired by drugs or intoxicants.
 3. FILING INSTRUCTIONS.

a. <u>Remove page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Dated</u>
Atch 1, pages 7 and 8	3-23-83	Atch 1, pages 7 and 8	8-24-90
		Atch 1, pages 8A (and 8B)	3-23-83
Atch 1, pages 11 thru 13 (and 14)	3-21-89	Atch 1, pages 11 and 12	8-24-90

- b. After filing the attached pages, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



JIM E. TARRO
Director of Administration and
Human Resource Management

DISTRIBUTION:

All Departmental Elements

INITIATED BY:

Office of Personnel and
Career Development

	<u>CAUSE</u>	<u>ACTION</u>		
		<u>First Breach</u>	<u>Second Breach</u>	<u>Third Breach</u>
13.	Deliberate misrepresentation; falsification, exaggeration, or concealment of a material fact in connection with any official document; or withholding of material facts in connection with matters under official investigation.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
14.	Rude, boisterous play which adversely affects production, discipline, or morale; use of abusive or offensive language; quarreling or interfering with the production of others.	Reprimand to 5-Day Suspension	Reprimand to Removal	Reprimand to Removal
15.	Fighting, threatening of inflicting bodily harm on another, physical resistance to competent authority or indecent or immoral conduct.	Reprimand to Removal	Reprimand to Removal	5-Day Suspension to Removal
16.	Gambling during working hours.	Reprimand	Reprimand to 5-Day Suspension	Reprimand to Removal
17.	Promotion of or assisting in operation of organized gambling on premises.	Reprimand to Removal	5-Day Suspension to Removal	10-Day Suspension to Removal
18.	Abusing or unauthorized possession, use, or distribution of drugs or intoxicants:			

Vertical line denotes change.

	<u>CAUSE</u>	<u>ACTION</u>		
		<u>First Breach</u>	<u>Second Breach</u>	<u>Third Breach</u>
	a. Selling, providing, or possessing any illegal drug while on DOE property or while on official duty.	Reprimand to Removal	Removal	
	b. Selling other intoxicants or drugs while on DOE property or while on duty.	Reprimand to Removal	5-Day Suspension to Removal	Removal
	c. Reporting for duty drunk or impaired by drugs or intoxicants. 3/	Reprimand to Removal	5-Day Suspension to Removal	5-Day Suspension to Removal
19.	Being on duty so intoxicated as to be unable to properly perform assigned duties, or to be a hazard to self or others. 3/	Reprimand to Removal	5-Day Suspension to Removal	5-Day Suspension to Removal
20.	Failure to honor acknowledged or adjudicated debts or legal obligations. (In determining whether a breach has occurred, consider whether extenuating circumstances have developed after the employee incurred the obligation and the employee's previous record.) 4/	Reprimand	Reprimand	Reprimand

Vertical line denotes change.

CAUSE	<u>ACTION</u>		
	<u>First Breach</u>	<u>Second Breach</u>	<u>Third Breach</u>
21. Making false, unfounded, or highly irresponsible statements against other employees, supervisors, other officials, or subordinates with the intent to destroy or damage the reputation, authority or official standing of those concerned.	Reprimand to Removal	5-Day Suspension to Removal	10-Day Suspension to Removal
22. Any action or failure to take action based on race, color, religion, sex (including sexual harassment), age or national origin of an employee, former employee, or applicant which affects his or her rights, privileges, benefits, dignity, and equality or economic opportunity. Consider circumstances and the effect on the person discriminated against, use of abusive language, violent treatment, or insulting demeanor. 5/	Reprimand to 5-Day Suspension	Reprimand to 14-Day Suspension	10-Day Suspension to Removal
If the discriminatory practice was deliberate. 5/	Reprimand to 14-Day Suspension	14-Day Suspension to Removal	Removal

employment receiving lower salary. A voluntary gift of a minimal value or a donation in a minimal amount is not prohibited when made on a special occasion.

- | | | | | |
|-----|--|-----------------------------------|------------------------------|------------------------------|
| 29. | Discourteous conduct to the public confirmed by an immediate supervisor's report. Suggested penalties remain the same after the third breach within a one year period. | Reprimand to 5-Day Suspension | 5-Day to 14-Day Suspension | 14-Day Suspension to Removal |
| 30. | Failure to work in a safe manner and to use required safety equipment. | Reprimand to 5-Day Suspension | 5-Day Suspension to Removal | 14-Day Suspension to Removal |
| 31. | Failure to carry out safety responsibility. | Reprimand | 10-Day Suspension to Removal | Removal |
| 32. | A verified positive result to any test administered under Departmental Authority, for use of illegal drugs. | Reprimand to "Removal <u>6</u> /" | Removal | |

Vertical line denotes change.

NOTES.

- 1/ Normally an oral admonishment is used for the first breach. Maximum penalty for a third breach within 2-year period is 1-day suspension and for a fourth breach in the period is a 5-day suspension.
- 2/ When an employee fails to report for duty or to return from leave or furlough and fails to notify management of his or her intentions, and after attempting to do so the activity has been unable to ascertain his or her intention concerning his or her return to duty, a removal may be initiated in accordance with merit and procedural requirements of this regulation after the passage of a reasonable time (a minimum of 10 calendar days).
- 3/ If allegations charging such conduct are supported by a verified positive drug test administered under Departmental authority, procedures and penalties cited under cause 32 shall be applied. Any action taken under this paragraph shall be coordinated with appropriate Departmental Employee Assistance Program Personnel .
- 4/ There is no breach unless (a) the validity of the debt is established; (b) there has been a failure to either arrange for or comply with a repayment schedule; and (c) there is a current complaint from the creditor. Suspension is not an authorized correction action. Maximum corrective for third and fourth offenses within a 2-year period is reprimand with the added warning that a "continuation of breaches could result in removal."
- 5/ If a supervisor or manager has engaged in an act of discrimination, in an unfair labor practice, or in a prohibited personnel practice, an evaluation will be made of the manner in which is or she generally discharges his/her management responsibilities to determine the appropriate action to be taken.
- 6/ An employee having a verified positive test result for use of an illegal drug must be relieved of sensitive duties until cleared for return by appropriate authorities. Such employees may be issued a notice of removal from employment if he/she cannot be retained in his/her position because of a specific job requirement to perform such sensitive duties and there is no alternate work assignment available. A "Verified Positive Test Result" means a test result that has been screened positive by a Food and Drug Administration approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmatory test approved by the Department of Health and Human Services), and evaluated by a Medical Review Officer.

Because of the serious nature of the impact that illegal drug activity can have on the Department's mission and its employees, supervisors should strongly consider taking the most firm action believed necessary to prevent further misconduct.

For further guidance on personnel actions concerning employee involvement in the use of illegal drugs see DOE 3792.3, DRUG-FREE FEDERAL WORKPLACE TESTING IMPLEMENTATION PROGRAM, Chapter III, paragraph 5d(3) and 5e(1) through 5e(4).

Vertical line denotes change

U.S. Department of Energy
Washington, D.C.

PAGE CHANGE

3750.1 Chg 5

3-9-92

SUBJECT: WORK FORCE DISCIPLINE

1. PURPOSE. To transmit revised pages to DOE 3750.1, WORK FORCE DISCIPLINE, of 2-23-83.
2. EXPLANATION OF CHANGE. To add appropriate corrective actions to Attachment 1, Guide to Selecting Action in Discipline Cases, for cases where an employee has violated environmental laws, rules or regulations.
3. FILING INSTRUCTIONS.
 - a.

<u>Remove Pages</u>	<u>Dated</u>	<u>Insert Pages</u>	<u>Dated</u>
Attachment 1, Pages 11 & 12	8-24-90	Attachment 1, Pages 11 - 13	3-9-92
 - b. After filing the attached pages, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



JOHN J. NETTLES, JR.
Director of Administration
and Human Resource Management

DISTRIBUTION:

All Departmental Elements

INITIATED BY:

Office of Personnel

	CAUSE	ACTION		
		First Breach	Second Breach	Third Breach
	employment receiving lower salary. A voluntary gift of a minimal value or a donation in a minimal amount is not prohibited when made on a special occasion.			
29.	Discourteous conduct to the public confirmed by an immediate supervisor's report. Suggested penalties remain the same after the third breach within a 1-year period.	Reprimand to 5-Day Suspension	5-Day to 14-Day Suspension	14-Day Suspension to Removal
30.	Failure to work in a safe manner and to use required safety equipment.	Reprimand to 5-Day Suspension	5-Day Suspension to Removal	14-Day Suspension to Removal
31.	Failure to carry out environmental or safety responsibility.	Reprimand	10-Day Suspension to Removal	Removal
132.	Failure to obey environmental law, rule, or regulation.	Reprimand	10-Day Suspension to Removal	Removal
	a. When consequences are extreme, or there is possible or actual danger to public health or safety.	Reprimand to 10-Day Suspension	14-Day Suspension to Removal	Removal
	b. If violation was deliberate, or an attempt is made to conceal the violation.	10-Day Suspension to Removal	Removal	

Vertical line denotes change

	CAUSE	ACTION		
		First Breach	Second Breach	Third Breach
33.	A verified positive result to any test for use of illegal drugs administered under Departmental Authority.	Reprimand to Removal 6/	Removal	

Vertical line denotes change

NOTES:

- 1/ Normally an oral admonishment is used for the first breach. Maximum penalty for a third breach within 2-year period is 1-day suspension and for a fourth breach in the period is a 5-day suspension.
- 2/ When an employee fails to report for duty or to return from leave or furlough and fails to notify management of his or her intentions, and after attempting to do so the activity has been unable to ascertain his or her intention concerning his or her return to duty, a removal may be initiated in accordance with merit and procedural requirements of this regulation after the passage of a reasonable time (a minimum of 10 calendar days).
- 3/ If allegations charging such conduct are supported by a verified positive drug test administered under Departmental authority, procedures and penalties cited under cause 32 shall be applied. Any action taken under this paragraph shall be coordinated with appropriate Departmental Employee Assistance Program Personnel.
- 4/ There is no breach unless (a) the validity of the debt is established; (b) there has been a failure to either arrange for or comply with a repayment schedule; and (c) there is a current complaint from the creditor. Suspension is not an authorized correction action. Maximum corrective for third and fourth offenses within a 2-year period is reprimand with the added warning that a "continuation of breaches could result in removal."
- 5/ If a supervisor or manager has engaged in an act of discrimination, in an unfair labor practice, or in a prohibited personnel practice, an evaluation, will be made of the manner in which is or she generally discharges his/her management responsibilities to determine the appropriate action to be taken.
- 6/ An employee having a verified positive test result for use of an illegal drug must be relieved of sensitive duties until cleared for return by appropriate authorities. Such employees may be issued a notice of removal 'from employment if he/she cannot be retained in his/her position because of a specific job requirement to perform such sensitive duties and there is no alternate work assignment available. A "Verified Positive Test Result" means a test result that has been screened positive by a Food and Drug Administration approved immunoassay test, confirmed by a Gas chromatography/Mass Spectrometry assay, (or other confirmatory test approved by the Department of Health and Human Services), and evaluated by a Medical Review Officer.

Because of the serious nature of the impact that illegal drug activity can have on the Department's mission and its employees, supervisors should strongly consider taking the most firm action believed necessary to prevent further misconduct.

For further guidance on personnel actions concerning employee involvement in the use of illegal drugs see DOE 3792.3, DRUG-FREE FEDERAL WORKPLACE TESTING IMPLEMENTATION PROGRAM, Chapter III, paragraph 5d(3) and 5e(1) through 5e(4).

Vertical line denotes change.

U.S. Department of Energy
Washington, D.C.

PAGE CHANGE

DOE 3750.1 Chg 6

8-21-92

SUBJECT: WORK FORCE DISCIPLINE

1. PURPOSE. To transmit revised pages to DOE 3750.1, WORK FORCE DISCIPLINE, of 3-23-83.
2. EXPLANATION OF CHANGE. To make only organizational title and routing symbol changes required by Notices in the SEN-6 series. No substantive changes have been made.
3. FILING INSTRUCTIONS.

a.	<u>Remove Page</u>	<u>Dated</u>	<u>Insert Page</u>	<u>Dated</u>
	1	3-23-83	1	8-21-92
	2	3-21-89	2	3-21-89
	3 and 4	3-21-89	3 and 4	8-21-92
	II-1 thru II-4	3-23-83	II-1	3-23-83
			II-2	8-21-92
			II-3	8-21-92
			II-4	3-23-83
	II-5 and II-6	3-21-89	II-5 and II-6	8-21-92
	IV-1	3-23-83	IV-1	3-23-83
	IV-2	1-6-86	IV-2	8-21-92

- b. After filing the attached pages, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



DOLORES L. ROZZI
Director of Administration
and Human Resource Management

DISTRIBUTION:

All Departmental Elements

INITIATED BY:

Office of Personnel

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 3750.1

3-23-83

Change 6: 8-21-92

SUBJECT: WORK FORCE DISCIPLINE

-
1. PURPOSE. To provide guidance and procedures and state responsibilities for maintaining work force discipline in the Department of Energy (DOE).
 2. REFERENCE.
 - a. Title 5, Code of Federal Regulations, parts 432, 735, and 752, which provides the statutory procedures for adverse actions and establishes ethical and other conduct standards and responsibilities for Federal employees.
 - b. Federal Personnel Manual (FPM) chapters 751 and 752, which state the Office of Personnel Management regulations and requirements for disciplinary and adverse actions.
 - c. DOE 3710.1A, LABOR-MANAGEMENT RELATIONS PROGRAM FOR FEDERAL EMPLOYEES, of 9-30-86, which outlines procedures for the administration of the Federal employee labor relations program.
 - d. DOE 3771.1, GRIEVANCE POLICY AND PROCEDURES, of 7-2-81, which provides guidance and instructions for establishing and administering the grievance system of the DOE.
 3. COVERAGE AND EXCLUSIONS. This Order applies to all paid employees within the Department except:
 - a. Employees covered by sections 621(b) and (d) of Public Law 95-91, Department of Energy Organization Act;
 - b. Administrative Law Judges;
 - c. Experts and consultants;
 - d. Employees occupying positions above the GS-15 or GM-15 grade level;
 - e. Employees in the Senior Executive Service;
 - f. Presidential appointees;
 - g. Employees occupying positions in schedule C of part 213 of Title 5, Code of Federal Regulations.

Vertical line denotes change.

DISTRIBUTION:

All Departmental Elements

INITIATED BY:

Office of Personnel

4. POLICY.

- a. Disciplinary actions shall be taken only for the purposes of correcting: unacceptable conduct, behavior on the job, or situations that adversely affect job performance; violations of laws, rules, or regulations.
- b. Actions shall be taken for unacceptable performance or nonperformance of assigned duties and failure to properly discharge inherent or assigned responsibilities.
- c. Unless proposed by the Secretary, all final decisions to take adverse actions (including reductions in grade and removals based on unacceptable performance) must be made by a higher level official in the chain of command than the official who proposed the action.

5. DEFINITIONS.

- a. Adverse Action. A personnel action which reduces an employee's basic pay or grade, or which involuntarily separates the employee from the Federal service, or which involuntarily places the employee in a nonpay, nonduty status. Adverse actions may result from disciplinary or nondisciplinary situations. Adverse actions are:
 - (1) Suspension. An action which places an employee, for disciplinary reasons, in a temporary status without duties and pay.
 - (2) Reduction in Grade or Pay. Actions taken that change an employee from a position at one grade and rate of basic pay to another position at a lower grade and rate of basic pay. (See Attachment 9 for reductions in grade or pay excluded from coverage of this Order.)
 - (3) Furlough. The placing of an employee in a temporary status, without duties and pay because of lack of work or funds or for other nondisciplinary reasons.
 - (4) Removal. The separation of an employee from his or her position in the department for cause.
- b. Board. Merit Systems Protection Board.
- c. Cause. A recognizable offense against the employee-employer relationship. May be reasons that are personal to the employee such as on or off the job misconduct, inefficiency, or physical or mental inability to perform the duties of the position. There may also be impersonal reasons such as an emergency situation necessitating a short furlough or the need to correct a merit promotion error. Some causes have been specified by rules, Executive order, or regulation. A cause must also promote the efficiency of the service.

- d. Days. Calendar days.
- e. Deciding Official. The management official designated to make the final decision on a notice of proposed action issued by a Department official at a lower management level.
- f. Proposing Official. The supervisor or manager who issues a notice of proposed adverse action to an employee. (The supervisor or manager who issues an admonishment or reprimand to an employee is an issuing official.)
- g. Oral Admonishment. A disciplinary discussion between a management official or supervisor having the authority to take disciplinary action and an employee subject to that authority.
- h. Reprimand. A formal disciplinary action notice issued to an employee by a management official or supervisor having disciplinary authority with respect to that employee.

6. RESPONSIBILITIES.

- a. Heads of Departmental Elements with Delegated Personnel Authority shall:
 - (1) Administer a fair, impartial uniform, and regulatory proper work force discipline program within their jurisdictions.
 - (2) Assure that the rules and other conditions of employment are readily available to all employees under their jurisdiction.
 - (3) Assure that supervisors and management officials consider the guide contained in Attachment 1, and when the limitation on corrective actions is to be exceeded, assure that it is properly authorized.
 - (4) Issue notices of decision on adverse actions proposed by subordinate officials against employees under their jurisdiction.
 - (5) Approve or disapprove requests to extend the time to answer notices of proposed actions.
 - (6) Approve or disapprove requests to extend the notice of proposed action, not to exceed 30 additional days, in cases of reduction in grade and in cases of removal based on unacceptable performance.
 - (7) Advise the servicing personnel office whenever any of the above authorities are redelegate. All redelegations must be in writing.
- b. Director of Administration and Human Resource Management provides overall direction and administration of the Department's work force discipline program.

- c. General Counsel shall review all petitions for payment of attorney fees for compliance with statutory and regulatory requirements and will concur on all DOE responses.
- d. General Counsel or Chief Counsel of a Field Organization shall provide legal advice and assistance to servicing personnel offices. In coordination with servicing personnel offices, represents or participates in the preparation for representation of the DOE before the Board.
- | e. Director of Personnel shall:
 - (1) Develop the work force discipline program of the Department and provide staff assistance and advice on matters covered by this Order.
 - (2) Implement actions directed by the Office of Personnel Management and other outside authorities.
 - (3) Determine whether or not to seek review of initial decisions issued by presiding officials of the Board.
 - (4) Request approval of the Office of Personnel Management to extend the notice period for a reduction in grade or removal based upon unacceptable performance beyond the additional 30 days granted by officials in paragraph 6a.
- f. Servicing Personnel Offices shall:
 - (1) Provide technical advice and assistance to supervisors and management officials in the implementation of this program.
 - (2) Review all disciplinary actions for consistency with rules, regulations, and Departmental procedures.
 - (3) Inform employees of their employment obligations.
 - (4) Provide advice and assistance on procedures to employees who are subject to disciplinary or adverse actions.
 - | (5) After giving advance notice to the Director of Personnel, coordinate with the General Counsel or chief counsel of a field organization in order to provide for representation of the Department at hearings before the Board.
- g. Supervisors and Managers shall:
 - (1) Keep employees informed of rules, regulations, and standards of conduct, and maintain order and discipline within the framework of established procedures.

CHAPTER II

TYPES OF DISCIPLINARY ACTIONS, COVERAGE, AND PROCEDURES

1. ORAL ADMONISHMENT.

- a. Coverage. All employees within the scope of this Order are covered by this paragraph.
- b. Use. There is no prescribed format for an oral admonishment. It is particularly suitable to situations which can be corrected by the employee and is used where it is anticipated that it will achieve the required changes in conduct, habit, or work method.

2. NOTICE OF REPRIMAND.

- a. Coverage. All employees within the scope of this Order are covered by this paragraph.
- b. Use. The notice of reprimand should be used in those situations which require an action more stringent than an oral admonishment, such as where an employee has not responded constructively to oral admonishments for the same or similar breaches. In some situations a notice of reprimand may be the last step in a progression of penalties before removal if the employee has been given a clear warning that a further offense could lead to removal.
- c. Contents. Notices of reprimand shall specify clearly the nature of the infraction or transgression, including specific information related to that reason such as times, dates, and circumstances that required corrective action to be taken. It should inform the employee of all time limits, the right to grieve, where to seek assistance regarding the grievance procedure, of the right to representation, and that the notice will be filed in the OPF for a period of 1 year unless the employee leaves the DOE sooner. (Attachment 2 contains an example of a notice of reprimand.)

3. SUSPENSION FOR 14 DAYS OR LESS.

- a. Coverage. The following DOE employees are covered by this paragraph:
 - (1) All employees in the competitive service.
 - (2) All employees who occupy a position in schedule A or schedule B of part 213 of Title 5, Code of Federal Regulations, and FPM chapter 213.

b. Procedures.

(1) Notice of Proposed Suspension for 14 Days or Less. The notice must indicate clearly that it is a proposal rather than a final decision, and that the final decision will not be made until after receipt of the employee's reply or after the expiration of the time period for reply if no reply is made. It shall also inform the employee where and to whom the reply shall be directed and the right to:

- (a) Review the material supporting the action proposed in the notice. While not required, proposing officials are encouraged to attach to the notice of proposal copies of all supporting material.
- (b) A reasonable time to answer (but not less than 24 hours) orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer.
- (c) Be represented by an attorney or other representative. (See FPM chapter 752, DOE 3710.1A, and the labor management agreement if the employee is included in a bargaining unit.) (Attachment 3 contains an example of a notice of proposal.)

(2) Notice of Decision.

- (a) The notice of decision shall be issued at the earliest practicable date after the receipt of the employee's reply, or after expiration of the time allocated for the employee's answer. In arriving at the written decision, only the reason(s) specified in the notice of proposed action and any answer of the employee or his or her representative will be considered.
- (b) The decision shall state which reason(s) were relied upon and which were not (tell the employee which reasons in the proposal notice were determined to be valid and which were dismissed and why) and, if the proposed suspension is determined to be warranted, the effective date of the action. No new reasons may be added to the letter of decision.
- (c) The notice must state the employee's grievance rights and whom to contact regarding these rights. (Attachment 4 contains an example of a notice of decision.)

4. REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, OR REDUCTION IN GRADE. This paragraph applies to, but is not limited to, disciplinary action; based on conduct related factors or disciplinary actions that involve both conduct and performance related factors. An employee may be removed or reduced in grade for misconduct or for unacceptable performance. The regulatory and procedural requirements are different in each case. For procedures on

reduction in grade or removal of an employee based solely on unacceptable performance, see page 11-5, paragraph 5. When an employee is removed, suspended for more than 14 days, or reduced in grade based on unacceptable performance and for misconduct, or for misconduct alone, this paragraph applies. However, such actions must promote the efficiency of the service.

a. Coverage. The following Departmental employees are covered by this paragraph:

- (1) All employees in the competitive service who are not serving a probationary or trial period under an initial appointment, or who have completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less.
- (2) All employees who are preference eligibles in the excepted service who have completed 1 year of current continuous service in the same or similar positions.
- (3) An employee with competitive status who occupies a position in schedule 8 of part 213 of Title 5, Code of Federal Regulations, and FPM chapter 213.

b. Procedures.

(1) Notice of Proposed Action.

- (a) The notice of proposed action must state clearly the reason(s) for proposing the action and include the specific information that supports that reason, such as times, dates, and circumstances. It shall inform the employee that if the proposed action is taken, it will not become effective earlier than 30 days from the date of receipt of the notice. Additionally, the employee shall be informed of the right to:
 - 1 Review the material supporting the reasons for the action proposed in the notice. While not required, proposing officials are encouraged to attach to the notice of proposal copies of all supporting material.
 - 2 A reasonable time, but not less than 7 days, to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer.
 - 3 Be represented by an attorney or other representative. (See FPM chapter 752, DOE 3710.1A, and the labor management agreement if the employee is included in a bargaining unit.)
- (b) The notice of proposed action must indicate clearly that the notice is a proposal and that a final decision will not be made until after receipt of the employee's reply or after expiration

of the time period for reply. It must also inform the employee where and to whom to direct a reply. (Attachment 5 contains an example of a notice of proposal.)

- (c) The person designated to hear the employee's oral answer shall have the authority to either make or recommend a final decision on the proposed adverse action.

(2) Exception.

- (a) The following exception to the 30-day notice period is authorized.
 - 1 The 30-day advance notice period is not required when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. This exception shall not be invoked solely on evidence of the employee's arrest. However, in those instances where there is evidence that the employee was arrested and held for further legal action by a magistrate or was indicted by a grand jury there would be reasonable cause for believing the employee committed a crime.
 - 2 If this exception is invoked, the employee may be required to furnish any answer to the proposed action and affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than 7 days.
 - 3 When the circumstances require immediate action, the employee may be placed in a nonduty status with pay for such time, not to exceed 10 days, as is necessary to effect the action.
- (b) Currently, the above is the only exception to the 30-day notice period. In disciplinary situations involving a need to keep the employee away from his or her position, a temporary reassignment during the 30-day advance notice period may be advisable.
- (c) In emergency, nondisciplinary situations involving the need to remove the employee from the premises immediately, the employee should be required to take sick or annual leave, as appropriate, or leave without pay, if the employee has exhausted his/her sick and annual leave. However, after the immediate emergency passes, the employee must be returned to duty if he or she is able to perform. If subsequent adverse action is to be initiated, the employee must be maintained in a pay status during the notice period.

| (d) Before taking any action in the above situations, consult with the employee/labor relations policy staff of the Office of Personnel.

(3) NOTICE OF DECISION.

- (a) The notice of decision shall be issued at the earliest practicable date after receipt of the employee's reply or expiration of the time allocated for the employee's answer. In arriving at the decision, only the reasons specified in the notice of proposed action and any answer of the employee or his or her representative made to the designated official will be considered.
- (b) The decision shall state which reason(s) were relied upon (tell the employee which reasons in the proposal notice were determined to be valid and which were dismissed and why), and if the proposed action is determined to be warranted, the effective date of the action. No new reasons may be added to the notice of decision.
- (c) It shall contain information regarding appeal and representation rights and the name of the individual who the employee may contact concerning appeal rights and procedures.
- (d) It shall be delivered to the employee at or before the time the action becomes effective. (Attachment 6 contains an example of a notice of decision.)

5. REDUCTION IN GRADE OR REMOVAL BASED ON UNACCEPTABLE PERFORMANCE. An employee may be reduced in grade or removed at any time during the performance appraisal cycle that the employee's Performance in one or more critical elements of the job becomes unacceptable. The procedures and requirements for such actions are separate from those contained in paragraph 4.

- a. Coverage. This paragraph applies to all employees, except those excluded in paragraph 3 of Attachment 9.
- b. Reasonable Time. Before proposing a reduction in grade or removal under this paragraph, the employee shall be informed of the critical element(s) for which performance is unacceptable, and given a reasonable time to demonstrate acceptable performance for the critical element(s) identified as unacceptable. Reasonable time means an amount of time commensurate with the duties and responsibilities of the employee's job which is sufficient to allow the employee to show whether he or she can meet minimum performance standards.
- c. One-year Limitation. Title 5, United States Code, section 4303(c)(2) places a 1-year time restriction on the age of instances used to support the demotion or removal of an employee for unacceptable performance.

d. Procedures.

- (1) Notice of Proposed Action. An employee whose reduction in grade or removal is proposed under this paragraph is entitled to 30 days advance written notice of the proposed action. The notice shall identify the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical elements of the employee's position involved in each instance of unacceptable performance. It shall inform the employee of the right to:
- (a) Be represented by an attorney or other representative. (See FPM chapter 752, DOE 3710.1A, and the labor management agreement if the employee is included in a bargaining unit.)
 - (b) A reasonable time to answer orally and in writing.
- (2) Extension of Notice Period. The 30-day advance notice period may be extended for not more than 30 additional days by an authorized Departmental official (see page 3, paragraph 6a(6)). Requests to extend further the notice period shall be referred by the deciding official to the Director of Personnel, who may request prior approval from the Office of Personnel Management.
- (3) Notice of Decision. The written decision to retain, reduce in grade, or remove an employee shall be issued within 30 days after the date of expiration of the advance notice. In the case of a reduction in grade or removal under this paragraph, the written decision shall specify the instances of unacceptable performance by the employee on which the reduction in grade or removal is based. Instances of unacceptable performance more than 1-year old as of the date of the notice of proposal may not be used as a basis for action in connection with the decision. It shall contain information regarding appeals and representation rights and the name of the individual who the employee may contact concerning appeal rights and procedures. It shall be delivered to the employee at or before the time the action becomes effective.
- (4) Performance Improvement. If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any Departmental records relating to the employee.

CHAPTER IV

REPRESENTATION, APPEALS, AND GRIEVANCES

1. REPRESENTATION.

- a. Employees who have received a notice of proposed disciplinary action are entitled to be represented by an attorney or other representatives. In addition, employees may be accompanied by a representative when making an oral reply to a notice or proposed adverse action. If an employee of the Department is selected as a representative and that person is willing to serve, the representative's supervisor, acting independently or in concert with the supervisor of the selecting employee, may disallow the employee's choice on the basis that the:
 - (1) Individual's activities as a representative would cause a conflict of interest or position; or
 - (2) Release of the employee from his or her official position would give rise to unreasonable costs to the Government; or
 - (3) Individual's priority work assignments preclude his or her release from official duties.
- b. The terms of any applicable" collective bargaining agreement govern representation for employees in an exclusive bargaining unit.
- c. This paragraph does not apply to representation during appeals before the board and in cases of disciplinary actions that are grieved. (See title 5, Code of Federal Regulations, section 1201.31, for procedures governing representation during appeals before the board and DOE 3771.1 concerning representation during grievances.)

2. APPEALS.

- a. Employees in the Competitive Service or Who Are Preference Eligibles.
Employees are entitled to appeal the following actions to the board beginning with the day after the effective date of the action until not later than 20 calendar days after the effective date:
 - (1) Adverse actions, except suspensions of 14 days or less;
 - (2) Reduction in grade or removal based on unacceptable performance;
 - (3) Adverse actions or reduction in grade or removal based on unacceptable performance coupled with an allegation of prohibited discrimination.

- b. When a decision letter is issued to an employee on a matter appealable to the board, the employee shall be provided:
 - (1) Notice of the time limits for appealing to the board and the address of the appropriate board office for filing the appeal;
 - (2) A copy of the board's regulations;
 - (3) A copy of the Merit Systems Protection Board Form 20, "Merit Systems Protection Board Appeals Form"; and
 - (4) Notice of any applicable rights to a grievance procedure.
 - c. Petitions for Review. A request to the board to review the initial decision of a presiding official shall be recommended by the servicing personnel office to the Director of Personnel and arrive as soon as possible after receipt of the initial decision. Such recommendations shall establish that:
 - (1) New and material evidence is available that, despite due diligence, was not available when the record was closed; or
 - (2) The decision of the presiding official is based on an erroneous interpretation of statute or regulation.
 - d. Prohibited Personnel Practice. Any employee who believes that a disciplinary or corrective action taken against him or her is a prohibited personnel practice under Title 5, United States Code, section 2302, may file a complaint with the special counsel of the board.
3. GRIEVANCES. See DOE 3771.1 concerning grievances.
4. ATTORNEY FEES. If a presiding official or the full Board fails to sustain a DOE action on appeal, the appellant may request payment of attorney fees under title 5, Code of Federal Regulations, section 1201.37, pursuant to the authority in title 5, United States Code, section 7701(g), or under title 42, United States Code, section 2000e-5(k) if discrimination is found under title 5, United States Code, section 2302(b)(1). Title 5, United States Code, section 7701(g) authorizes payment of reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice. The Office of General Counsel will review all petitions for payment of attorney fees for statutory and regulatory compliance and will concur in all DOE responses. Accordingly, all such petitions will be forwarded immediately to the Assistant General Counsel for General Law; the petitions will be accompanied by proposed Departmental responses and by supporting documentation, such as local attorney fee schedules or other comparative data. The General Counsel will inform the Director of Personnel of DOE responses and the subsequent findings of the Board.